

**Hearing Panel:** Bill Wasley (Chairperson), Richard Knott, Loretta Lovell

**Hearing Commencement Date:** 2 May 2019

**Report Name:** s42A Planning Report on Publicly Notified Resource Consent Applications – to develop and subdivide some 105 hectares of land adjoining the western bank of the Waikato River in Peacocke, Hamilton for residential development and associated works and land use activities.

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**Author:** Gillian Cockerell

## REPORTING OFFICER

1. This report has been prepared by Gillian Cockerell. I am a Principal Planner with Hamilton City Council (HCC), a position I have held for the last four years. I have a Bachelor of Regional Planning Degree from Massey University, 1980 and I am a full member of New Zealand Planning Institute (NZPI). I have thirty-eight years of professional experience in the resource management field, both in Local Government and private consultancy.
2. I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and have complied with that practice note in preparation of this report. I agree to comply with it in presenting this report and any evidence at the hearing. The opinions and assessment within this report are within my area of expertise, except where I have stated my reliance on other identified evidence. I have considered all material facts that are known to me that might alter or detract from the opinions that I express in this evidence.

## REPORT STATUS

3. This report is a s42A Report prepared under the Resource Management Act 1991 (RMA) which provides my advice and recommendations as an independent planner. The report has been prepared on the basis of information available on 28 March 2019. It does not represent any decision on the applications and the conclusions and recommendations reached in the report are not binding on the Hearing Commissioners. The report will be considered by the Commissioners in conjunction with all other technical evidence and submissions to the applications to form and make a decision under delegated authority on behalf of Hamilton City Council as the consenting authority.
4. In this report, I will outline the statutory planning framework insofar as it relates to the proposal. I will provide my assessment under section 104 of the RMA, and in doing so I will identify the issues raised through the notification process and will assess the effects of the proposal (both

adverse and positive) and the effectiveness of mitigation measures proposed by the applicant. The report draws on specialist advice concerning traffic, ecology, visual and landscape, urban design, heritage, geotechnical matters, and three waters infrastructure. The specialists' technical assessments are attached as numbered appendices as follows:

Processing Team	Personnel	Technical Expertise	Reference
HCC Principal Planner	Gillian Cockerell	Resource Management	This Report
Mansergh Graham Landscape Architects Ltd	Dave Mansergh	Visual/Landscape	Appendix A
Simmons & Associates	Alexy Simmons	Heritage	Appendix B
Tonkin & Taylor Ltd	John Brzeski	Geotechnical	Appendix C
HCC	Carmel Mangan	Contaminated Soils	Appendix D
Tonkin & Taylor Ltd	Gerry Kessels	Terrestrial Ecology	Appendix E
Gray Matter Ltd	Alasdair Gray	Transportation	Appendix F
Morphum Ltd	Caleb Clarke	Stormwater	Appendix G(a)
AECOM	Chris Hardy	Wastewater	Appendix G(b)
HCC	Jackie Colliar	Wastewater	Appendix G(c)
HCC	Jonathon Brooke	Engineering	Appendix G(d)
HCC	Colin Hattingh	Urban Design	Appendix H
HCC	Sean Stirling	Open Space	Appendix I

5. The Hearing Commissioners will have a copy of the application documents, all further information documents and submissions that have been received. The application documentation is extensive, is generally thorough and has been made available to the public, on the HCC website accessed via [www.hamilton.govt.nz/amberfield](http://www.hamilton.govt.nz/amberfield). For this reason, it is not intended to extensively repeat information that is provided in the application documentation.

#### **APPLICATION TIMELINE**

6. To record the timeline for the application, the following are the key dates of the application process:

15 June 2018	Application lodged with Council
5 July 2018	Further information request
17 August 2018	Responses to further information request
1 September 2018	Application Notified
28 September 2018	Submissions Close

**COMMISSIONERS DIRECTIONS**

7. The Commissioner Panel will hear and determine the application under delegated authority from Hamilton City Council. Commissioner Wasley has issued a direction for the pre-circulation of evidence and for the hearing process. The direction notice is dated 7 March 2019.
8. With respect to the pre-circulation of evidence for technical witnesses, the following dates are to be complied with for the availability of reports and evidence:
- |               |  |
|---------------|--|
| 4 April 2019  | Council s42A report                      |
| 15 April 2019 | Applicants statements of evidence        |
| 24 April 2019 | Submitters expert statements of evidence |
9. It is expected that the Applicant will table any rebuttal evidence at the opening of the hearing. I intend to provide an update to this s42A report during the hearing, when Council presents to the Hearing Commissioner Panel.

**S.42A REPORT - TABLE OF CONTENTS**

S.42A Planning Report

Attachment 1 – District Plan Maps

Attachment 2 – Archaeological Authority – Heritage New Zealand

Attachment 3 – District Plan Rule Compliance table

Attachment 4 - Recommended Conditions of Consent

The assessment and recommendation provided in the S.42A report have been informed by the technical assessment and professional recommendations by other experts including Council staff. This includes;

**APPENDIX A****Landscape/Visual Effects**

Statement of Evidence – dated 8 March 2019 prepared by Dave Mansergh, Mansergh Graham Landscape Architects Ltd

**APPENDIX B****Heritage Effects**

Statement of Evidence – dated 4 March 2019 prepared by Alexy Simmons, Simmons & Associates.

**APPENDIX C****Geotechnical Effects**

Statement of Evidence – dated 29 March 2019 prepared by John Brzeski, Tonkin & Taylor Ltd

**APPENDIX D**

**Contaminated Soils**

Technical Memo dated 4 March 2019 prepared by Carmel Mangan, Contaminated Land Officer, Hamilton City Council

**APPENDIX E**

**Ecological Effects**

Statement of Evidence (terrestrial ecology) – dated 2 April 2019 prepared by Gerry Kessels, Tonkin & Taylor Ltd

**APPENDIX F**

**Transportation Effects**

Statement of Evidence – dated 29 March 2019 prepared by Alasdair Gray, Gray Matter Consultants

**APPENDIX G**

**Three Waters Infrastructure**

- (a) Statement of Evidence (stormwater and flood hazard risk) – dated 29 March 2019 prepared by Caleb Clarke, Morphum Ltd
- (b) Statement of Evidence (wastewater) – dated 27 March 2019 prepared by Chris Hardy, AECOM Ltd
- (c) Technical Memo dated 29 March 2019 prepared by Jackie Colliar, Strategic Manager, Strategic Development Unit, Hamilton City Council
- (d) Technical Memo dated 29 March 2019 prepared by Jonathon Brooke, Project Engineer, Strategic Development Unit, Hamilton City Council

**APPENDIX H**

Technical Memos – dated 9 October 2018 and 9 March 2019 prepared by Colin Hattingh, Senior Urban Design Planner, City Planning Unit, Hamilton City Council

**APPENDIX I**

Technical Memo – dated 29 March 2019 prepared by Sean Stirling, Planner, Parks and Open Spaces Unit, Hamilton City Council

## 1 APPLICATION DETAILS

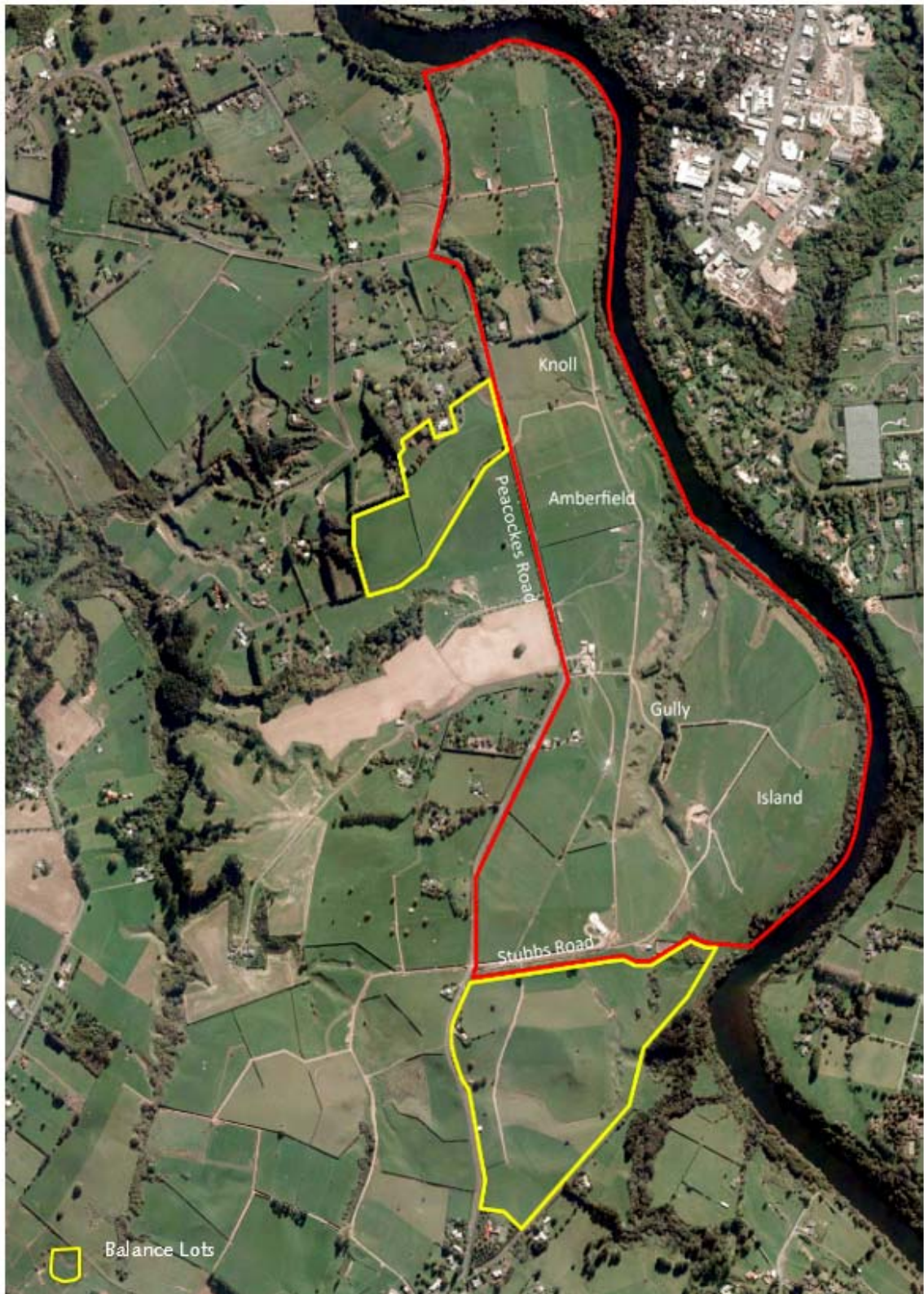
10. The administration details for the application are listed as follows:

Applicant	:	Weston Lea Limited
Address	:	337 – 461 Peacockes Road, Peacocke
Legal Description	:	Lots 1 and 2 DPS 81210 (SA66A/99), Lots 3 and 4 DPS 8120 (SA66A/100), Lot 1 DP 36935 (SA5D/1211), Part Lot 6 and Lot 8 DP 34164 (SA4B/788), Lot 5 DP 17475 (SA718/181), Allotment 87, Part Allotments 93 and 94 Te Rapa Parish (SA528/20), Lot 1 DPS 78023 (SA60A/826), and Pt Lot 10 DPS 7724 (SA7D/254).
Site Area	:	Approx 105 hectares
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Zone	:	Peacocke Character Zone, Natural Open Space Zone, Transport Corridor Zone
Structure Plan	:	Peacocke Structure Plan – Terrace and Hills Area, Neighbourhoods 3,6,7 & 8
Overlays	:	Waikato Riverbank and Gully Hazard Area, Waikato River Bank Stability Area, Low Flood Hazard Area
Features	:	Significant Natural Area (Nos. 48 & 54), Group 2 Significant Archaeological, Historic and Cultural Site (No. A100 Burrow Pits), Conical Obstacle Limitation Surface
Designations	:	Southern Links (No. A106)
Subject File	:	10.2018.9853.001 & 11.2018.6695.01
Application Received	:	15 June 2018
Activity Status	:	Non-complying Activity

(refer to **Attachment 1** for maps showing the above District Plan zoning and other features over the application site)

## 2 SITE AND LOCALITY

11. The site subject of the proposed urban development comprises approximately 105 hectares of presently pastoral dairy farming land bordered by Peacockes Road to the west and the Waikato River to the east and north, some 4 kilometres to the south of the Hamilton CBD. The site forms the eastern portion of the Peacockes Structure Plan an approximately 720 hectare area identified for future urban development in the District Plan.
12. The site is elongated in shape in a broadly north-south orientation and aligned along the curving alignment of the deeply incised Waikato River. The topography of the site is generally flat, with the overall slope of the land falling from Peacockes Road towards the Waikato River as a series of pronounced river terraces. A large gully that connects to the Waikato River divides the southern portion of the site creating an island area adjacent to the Waikato River. The area along the Waikato Riverbank is steep in contour and vegetated with largely exotic species, with some small areas of indigenous vegetation (with two areas identified in the District Plan as Significant Natural Areas (SNA Nos. 48 and 54). Small waterways draining the site include ephemeral and intermittent reaches and modified farm drains. The site given its location on rural-urban fringe of the city and opposite Hammond Bush (a key roosting habitat for long-tailed bat) on the eastern side of the Waikato River, is habitat for the nationally critically threatened long-tailed bat
13. The site is currently rural land used for dairying, with fencing and other structures, farm races, shelterbelts/hedgerows, farm buildings and several dwellings associated with this activity.
14. Modified soils and features relating to early Maori cultivation of the area extend across the site. The District Plan identifies one recorded archaeological feature on the site (Borrow Pits s14/176). However, the site investigations undertaken as part of the application has identified eight discrete Maori horticultural soil areas, and at least 12 unrecorded potential borrow pits spread across the site. The former Nukuhau Pa lies just outside the south eastern boundary of the site with several other pa sites opposite on the eastern bank of the Waikato River and others within a 1.5 kilometre radius.
15. Peacockes Road is the spine road to which the proposed subdivision road network will connect to and provide all access to other parts of the city. From Peacockes Road the key connecting roads to the major arterial road network are Norrie Ave, Bader Street, Waterford Road and Dixon Road.
16. To the east across the Waikato River from the site is the established residential area of Hillcrest and the predominantly industrial area of Riverlea. To the south of this area is rural lifestyle/large lot residential development located within Waikato District, with the river fronting properties containing large homes that face west with views across to the site.
17. To the south and west of the site within the Peacockes Structure Plan area the area is still largely rural and in pastoral production with pockets of small rural lifestyle properties. Further to the west is the residential areas of Fitzroy, Melville and Glenview, but are not visible from the site.
18. The aerial photograph below shows the location of the subject site.





### **3 BACKGROUND INFORMATION ON PEACOCKE AREA**

#### **3.1 Peacocke Zoning and Structure Plan**

19. The Peacocke area of some 740 hectares located at the south-western end of the city, officially became part of Hamilton, from Waipa District, in 1989 and was intended for housing development (known as the Peacocke Growth Cell). The area has since 1989 remained largely undeveloped due to the funding required to 'open up' the growth cell for development.
20. From 1989 to 2007, the Peacocke Growth Cell was zoned Future Urban in the respective District Plan documents to enable interim development that would not comprise the future development of the area for housing development. In 2007 the Council notified a variation to the then Proposed District Plan to introduce the Peacocke Structure Plan to set out a detailed development framework for Peacocke and the infrastructure provisions which aligned with other structure plans for growth cells within the city. The variation went through a protracted public process and finally became operative in May 2012, following the settlement of five appeals. The settled variation provisions changed the zoning from Future Urban to Peacocke Future Urban, the level of detail shown on the Structure Plan been significantly reduced and the introduction of masterplan requirements.
21. The then Proposed District Plan was made operative in July 2012 shortly after the settlement of the appeals. Following this the Council notified its second-generation district plan which embedded the settled Peacocke Structure Plan with amendments to align the roading network to reflect the proposed Southern Links Transport Network. The zoning of the Peacocke area was changed from Peacocke Future Urban to Peacocke Character Zone. The 2012 Proposed District Plan was made operative on 18<sup>th</sup> October 2017.

#### **3.2 Housing Infrastructure Fund**

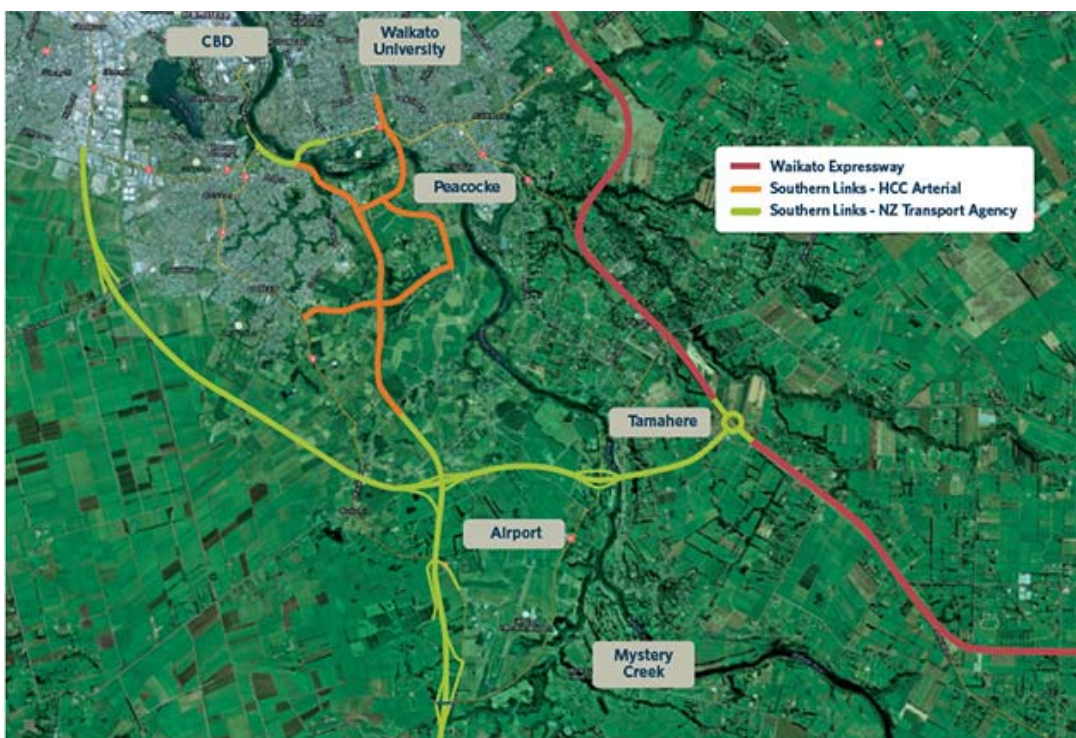
22. In recent years, Hamilton City has been experiencing very high population growth, and this along with the mandatory requirements under the National Policy Statement for Urban Development Capacity (NPS-UDC), placed a heavy burden on Council to fund the infrastructure required to meet the housing demand.
23. To meet this demand, it was identified that the City needs to open another greenfield area within the next 10 years. In planning for the 2018-28 10 Year Plan, Council considered a number of growth scenarios and financial modelling to determine how to meet the demand and the financial implications of the growth. This included looking at the staged development of Peacocke and Rotokauri over a 30-year period. However, all of the growth scenarios modelled presented significant funding challenges within the first 10 years and were considered beyond Councils ability to fund. Therefore, Council considered two growth scenarios where capital projects were deferred to create more affordable options over the first 10 years.
24. The preferred option that emerged from the modelling was development of Stages 1 and 2 of Peacocke, with capital expenditure only on the projects that Council must do. The development of other greenfield areas through the City were also deferred to be outside of the 10-year period.



25. Hamilton City Council participated in the Government led Housing Infrastructure Fund (HIF) initiative which offered interest free funding for 10 years towards the development of strategic infrastructure to enable more houses faster. Council obtained \$290.4m of funding via the Housing Infrastructure fund which includes \$110.1m of NZTA subsidy for transport projects. The process included five stages from 2016 – 2018 including preparation of a detailed business case and entering into a Loan Facility Agreement. As outlined in the Peacocke Detailed Business Case the benefits of the investment are the development of 3,750 dwellings over 10 years and approximately 8,400 over 30 years.
26. Key strategic network infrastructure planned to enable development of the Peacocke area are:
- Construction of a transfer pump station and pressure main to pump wastewater north from Peacocke to the Pukete treatment plant. This project is currently in design and programmed for completion in late 2023.
  - The extension of Wairere Drive and the construction of a bridge over the Waikato River. This bridge is designed and designated as part of the Southern Links Network and is consistent with the Peacocke Structure Plan. This bridge will accommodate walking, cycling and passenger transport, and provide a corridor for utilities including the wastewater pressure main. This project is currently in design and programmed for completion by late 2023.
  - The Wairere/Cobham Drive overpass (currently in construction with programmed completion in 2021)
  - An intersection at SH3 and Ohaupo Road (design complete, commencing enabling works construction in April 2019 and completion planned in 2020)

### 3.3 Southern Links Designation

27. Southern Links is the future state highway and local arterial road network in the southern part of the city as shown on the below plan.



28. Hamilton City Council and NZ Transport Agency (NZTA) have worked together on the Southern Links project to ensure the future state highway routes are well integrated with the local arterial road network, and to allow for the planned growth in the city. The statutory process to designate the Hamilton City Council part of Southern Links was completed on 9 March 2016. This includes a new bridge over the Waikato River, and designating Peacockes Road including a strip of land over the frontage of the application site (approx. width of 25 metres) for upgrading to a minor arterial urban road. The purpose of the designation is for 'Road' and provides for the formation, use and management of the roads including the provision of other facilities on, over or under any road. At the same time as the designation process a regional consent was also sought and granted for the bridge structure in relation to the bed of the river.
29. The parts of the Southern Links project being accelerated by the Council, with the support of the Government HIF and NZTA, includes most land purchase and:
- a new bridge over the Waikato River and connecting roads
  - a new east-west minor arterial road from SH3/Ohaupo Rd to Peacockes Rd
  - upgrading parts of Peacockes Rd to an urban standard
  - a new intersection in the vicinity of Dixon Rd / Ohaupo Rd (SH3)
30. Current expectations are that the new bridge and connecting roads will be completed by the end of 2023 with the east-west minor arterial works completed another two years after that. The new Ohaupo Rd (SH3) /East-west Peacocke Arterial intersection south of Dixon Road) is expected to be completed by late 2020.

#### **3.4 Peacocke Stage 1 - Road Safety Improvements**

31. Road safety improvements for Bader Street are currently in the detailed design phase and are programmed to be completed by late 2019. These include widening of footpaths to become shared paths, refuge islands and raised platform crossings at the shops. These improvements are in response to the traffic growth associated with the Peacocke Stage 1 area using the Bader Street corridor (refer plan of the improvements in the applicant's AEE, Appendix I and developed consultation plans included as attachments in the evidence of Mr Gray in **Appendix F**). The Peacocke Road and Peacocke Road/Waterford Road/Plateau Drive intersection investigation and design is not yet commenced, but safety improvements of some form are planned for construction in 2020.

#### **3.5 Peacocke Biodiversity Management Framework**

32. A Peacocke Biodiversity Management Framework is being developed for Council by Tonkin & Taylor Ltd in order to inform future strategic planning and decision-making within the Peacocke Structure Plan area. It will outline potential biodiversity opportunities and constraints within the Structure Plan area, provide guidelines on biodiversity offsetting and compensation best practice for developers to apply, and present a range of options for on-site and off-site measures to avoid, remedy or mitigate any significant residual adverse ecological effects associated with development. This framework has not been completed at the time of release of the section 42a report.

33. The HCC's expert terrestrial ecologist provided some preliminary offsetting model results to the applicant on a without prejudice basis prior to the relevant expert caucusing. However, following the expert terrestrial ecology caucusing on 18 February 2019, HCC's expert terrestrial ecologist considered there to be insufficient scientific information at this point in time to create a robust biodiversity offsetting model. I believe this related to effects on Long-Tailed bats. Therefore, I have not relied on the modelling information discussed at previous informal discussions on this matter when preparing the s42a report.

### **3.5 Peacocke Proposed Plan Changes**

34. The District Plan identifies that the Peacocke Structure Plan provisions will be used to guide future use and development of the area and will be used to inform future District Plan Changes (see Chapter 3, clause 3.4b). The planning provisions that have been put in place require master plans to be approved through the consent process in addition to consent for particular activities. The master plan approach has been reviewed and Council resolved on 11 October 2018 to approve the preparation of two Plan Changes to the Hamilton City District Plan for the Peacocke Structure Plan to remove the master plan provisions and provide a more detailed structure plan to achieve the desired planning outcomes for the area. At this stage it is anticipated that these plan changes will be presented to Council later in the year for approval to notify.
35. The proposal to prepare plan changes does not have any status under the RMA for the purpose of processing the current applications.

## **4 APPLICATION**

### **4.1 Proposal**

36. Weston Lea Limited ('the applicant'), representing the Peacocke family, proposes to develop a major new urban development at Peacocke, Hamilton, called Amberfield by the applicant.
37. The applicant is seeking land use and subdivision consents from the Hamilton City Council. The proposal as originally lodged and publicly notified sought to create a total of 867 fee simple lots from the site, comprising 862 residential lots (each accommodating a single dwelling), two 'large lots' (identified as neighbourhood centre in peach colour on plan below) for future residential and commercial development, one commercial lot (shown as future showroom/café on plan below) and two rural balance lots (shown on aerial photo above). The subdivision is to be completed in stages. The total site subject to the applications comprises approximately 139ha of land. Excluding the rural balance lots that will be created west of Peacockes Road and south of Stubbs Road, the site that will be subject to urban development and subdivision comprises approximately 105ha and is supported by a Master Plan.
38. Following public notification of the proposal and in response to submissions in relation to the potential impact of the development on ecological values (particularly the long-tailed bat) the applicant proposed some changes to the layout of the development in the north-eastern area of the site. The changes and addendum supporting documentation were received by Council on 25 February 2019 and were made available to all parties. The changes increased the setback of the proposed lots and roading from the Waikato River margin to increase the reserve area opposite Hammond Bush (known long-tailed bat roosting area) on the opposite side of the river

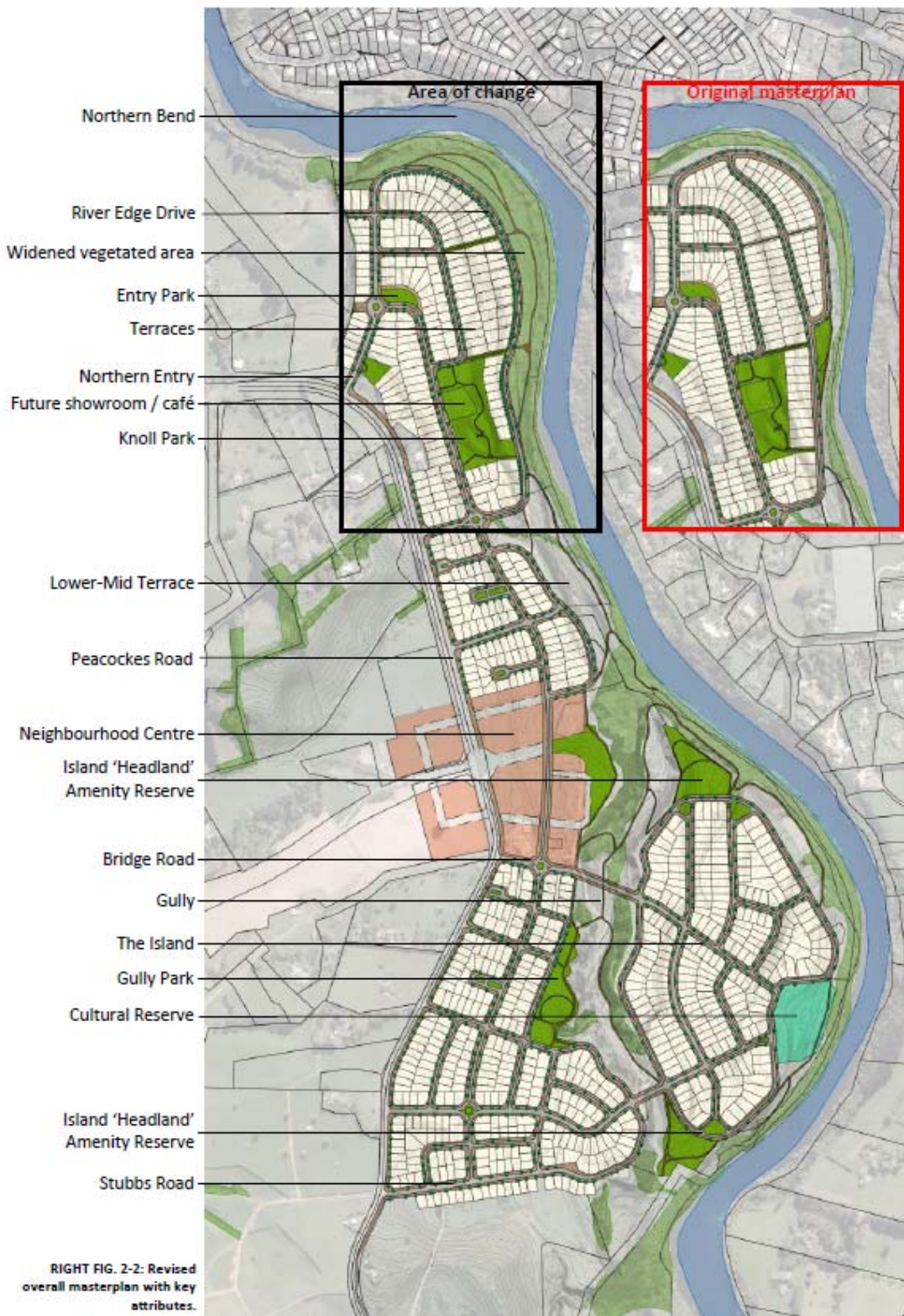
and to provide additional long tailed bat foraging habitat. Consequentially there is a reduction of 27 residential lots and a net increase in open space (to vest in Council). The proposed amendments also include the retention and enhancement of an existing east-west shelter belt to maintain connectivity through the site for the bats.

39. The proposal is now seeking consent for a total of 840 fee simple lots, comprising 835 residential lots. The residential lot sizes vary from over 700m<sup>2</sup> down to approximately 400m<sup>2</sup>, and anticipated building heights for dwellings vary from one storey to two storeys. The application states 41 'parent lots' are anticipated for further medium density subdivision in the future bringing the total number of anticipated dwellings to 882 across the site, excluding the future neighbourhood centre. A further 50 to 76 dwellings are anticipated within the future neighbourhood centre, which will also provide for between 5,000m<sup>2</sup> to 10,000m<sup>2</sup> of retail or employment uses. The further subdivision of the 'parent lots' and development of the neighbourhood centre will be subject to future land use and subdivision consents, and do not form part of the assessment in this report.
40. Areas of indigenous biodiversity and most indigenous trees are retained, and a network of open spaces are provided with approximately 5.18ha of neighbourhood and local amenity parks, an archaeological / cultural reserve of 1.6ha, and a further 26.05ha of esplanade and gully reserve areas. The masterplan for the development allows for the accommodation of a 7ha sports field in the southwest of the site adjoining Peacockes Road, in line with the Peacockes Structure Plan. The subdivision plans currently depict approximately 100 residential lots in this area. However, the lots and surrounding road network have been designed to accommodate the sports park. The s92 response (dated 17 August 2018) by the applicant confirms the provision of the Sports Park is contingent on Council initiatives to purchase and that no such commitment has been given. No consents are being sought through this application for development of the Sports Park. The development of the sports park will be a Council decision at a later stage and Council will be responsible for obtaining any land use consents required for the recreational use and associated buildings. The extent to which the proposal enables the sports park will be a matter for assessment in this report.
41. A connected street network comprising a range of street types is proposed to respond to traffic needs and living conditions. Bus routes are envisioned along Peacockes Road, and possibly linking through the subdivision in the future. Provision is made for cycling and walking both along the street network and public open space. Peacockes Road is the spine road to which the proposed subdivision road network will connect to and provide all access to other parts of the city. From Peacockes Road the key connecting roads to the major arterial road network are Norrie Ave, Bader Street, Waterford Road and Dixon Road.
42. The applicant's Assessment of Environmental Effects (AEE) has assessed the resources of significance on the site and surrounds. In particular, work has been undertaken on two such resources – historic heritage and the Hamilton South long-tailed bat population and habitat. Heritage resources in the form of modified soils and features relating to early Maori cultivation of the area extend across the site. The long-tailed bat roosting areas extend up and down the Waikato Riverbank margin of the site, but there is also evidence of bat movement corridors

across the site. Mitigation strategies for the effects of urban development on both these resources have been proposed. Whilst the cultivation areas will largely be lost to urban development, the proposed archaeological/cultural reserve will preserve a representative remnant and other mitigation that reaffirms the whakapapa of Waikato-Tainui will be part of the urban design and development. Development has avoided the margin of the Waikato River and the applicant has proposed bat sensitive design measures to mitigate the effects on the bat population that resides both on and off-site.

43. Amberfield is planned to be developed ahead of the public provision of key infrastructure such as a new bridge linking the subdivision to the Wairere Drive extension and connection to the city's wastewater network. These projects are part of the Council's 10 Year Plan being funded through the 10-year interest free Housing Infrastructure Fund Loan. Weston Lea's development of Amberfield is proposed on the basis that the subdivision and associated development does not need them to address adverse effects on either the safety or efficiency of the road network and the capacity and efficient operation of the wastewater network.
44. The proposed primary form of stormwater disposal and treatment will be via retention and soakage. Only in more extreme rainfall events will a secondary pipe network be utilised to discharge stormwater to local open space and the river. Wastewater generated within the development will be collected by a gravity reticulation system that will connect to the city's Far Eastern Interceptor via an interim pipe beneath the Waikato River (until the proposed Southern Links bridge is in place) and a 6km pipe line from the river to Crosby Rd. The application also proposes an alternative option of connecting to the Western Interceptor via the pump station in Lorne St. Water supply to the development will be provided by new mains pipelines connecting to the existing mains to the north west of the site on Peacockes Road.
45. A plan depicting the proposed layout of the development from the applicant's Addendum Urban Design Report (dated February 2019) of the application documentation is produced below and depicts the original layout and the proposed change in the north-eastern part of the site. The applicant also provided on 27 March 2019, an updated set of subdivision plans detailing the revised stages and a location and planting strategy for the proposed east-west shelterbelt.





## 4.2 Other Consents/Approvals

### Regional Consents

46. Separate resource consents have been applied for from the Waikato Regional Council concurrently with the applications to Hamilton City Council for enabling activities including earthworks, stream works, bridge over southern gully and stormwater discharges.

47. These matters are to be determined by the Waikato Regional Council on a non-notified basis (confirmed by email correspondence dated 11 March 2019), and apart from the earthworks do not form part of the matters to be determined in regard to the land use and subdivision consent applications subject of the assessment of this report. At the date of issue of this report the decisions on the regional consents had not been made but are anticipated to be determined before the commencement of the hearing of these applications.

#### **Archaeological Authority**

48. Heritage New Zealand has granted on 29 August 2018, an Authority (2019/069) pursuant to section 51 of the Heritage New Zealand Pouhere Taonga Act 2104, for the destruction of 11 recorded archaeological sites associated with the proposed development of Amberfield (refer to **Attachment 2**). The authority has been granted for a period of ten years to cover the anticipated timeframe of the development.

#### **Requiring Authority Approval**

49. The proposal includes land which is designated road by HCC as part of the Southern Links designation. The applicant has not obtained written consent from HCC as Requiring Authority, in relation to the designation bordering the western side of the proposed subdivision. This road is intended to be constructed to an arterial road standard (vis-à-vis the designation), but that in the context of the proposed subdivision the relevant standard would be that of a collector road (in the absence of the designation). I understand that it was intended that a private developer agreement (PDA) between HCC and the applicant would address this issue. No PDA is in place at the date of issue of this report.

50. Section 176(1)(b) of the Resource Management Act 1991 (RMA) states that:

*[...]*

*(b) no person may, without the prior written consent of that requiring authority, do anything in relation to the land that is subject to the designation that would prevent or hinder a public work or project or work to which the designation relates, including – (i) undertaking any use of the land; and (ii) subdividing the land; and (iii) changing the character, intensity, or scale of the use of the land.*

51. Furthermore, section 9(4) of the RMA (restrictions on use of land), states that:

*(4) No person may contravene section 176, ... unless the person obtains the prior written consent of the requiring authority...*

52. While the resource consent process is not specifically referenced in the designation part of the RMA and vice versa, clearly a resource consent cannot be implemented in the absence of written consent from a requiring authority as described in section 176(1)(b). A search of environment court decisions which have involved circumstances where approval from a requiring authority is necessary in order to implement a resource consent indicates that resource consent may be granted in the absence of requiring authority approval. In such circumstances, a consent holder will have recourse under section 179 to appeal the decision of a requiring authority not to provide written consent. Nevertheless, best practice would be for written consent from HCC as



requiring authority to be obtained at least prior to the finalisation of the section 42A report and hearing of the application to avoid complicating factors which may arise when seeking approval.

53. For example, a potential complication can arise where consent is issued in the absence of written consent from the requiring authority and the requiring authority subsequently seeks specific conditions which may affect the implementation of the resource consent; or the resource consent is unable to be implemented due to the lack of consent from the requiring authority.
54. In the absence of that consent, it is considered prudent and appropriate to impose a “condition precedent” which provides that the resource consents (subdivision and land use) cannot be implemented unless and until unconditional written consent is obtained from the requiring authority. It is then at the applicant’s risk if that consent requires specific conditions which conflict with or are inconsistent with the conditions of resource consent. In that situation the consent holder would then be obliged to apply for a s127 change of condition(s).
55. In the addendum AEE provided by the applicant on 25 February 2019 addressing the changes to the north-eastern part of the site, it confirms that the applicant intends to seek the requiring authority approval following the resource consent decision and accepts that the approval may be the subject of a condition of consent from HCC.
56. HCC submission (62) to the applications on behalf of Council’s Open Spaces and Facilities Unit and Strategic Infrastructure Unit raises the requirement for written consent from HCC as requiring authority, and states that any activity within the designation will be expected to comply with the designation conditions, as well as other requirements. The proposed subdivision plans show an approximate 18 metre width of the designation that extends into the Amberfield site as road to vest. The alignment for Peacockes Road minor arterial that supported the Southern Links designation does not necessarily require the whole 18m for the carriageway and berms. The designation width was to allow for cut and fill slopes for the road may become unnecessary where the Amberfield earthworks have raised the ground levels adjacent to the road to be closer to the expected road levels for the arterial. It is usual for a requiring authority to minimise the extent of designation following completion of the works where the land is no longer required.
57. A further approximately 7.5 metre width of the designation will extend over a number of proposed residential lots with frontage and access to Peacockes Road. The uplifting of the designation over the proposed residential lots would be required and it is unclear if this action is intended by the Requiring Authority.
58. Relevantly, the applicant’s proposed alignment for their collector road upgrade within the Southern Links designation is not consistent with the requiring authority’s current design for the arterial alignment. This raises an issue because it appears futile to impose conditions requiring a collector road to be constructed in a location when:
  - Its location is inconsistent with the location and layout of the designation design for the arterial road to be constructed as part of Southern Links;

- There is a very high degree of certainty (if not complete certainty), that the arterial road will be constructed as planned and timed by the Southern Links works; and
- It is expected that the arterial road will be constructed at or around the same time as works are underway for the Amberfield development.

59. It is expected that this matter will be addressed at the hearing by the submitter and the applicant. At this stage I have recommended a condition precedent requiring the applicant to obtain the unconditional written approval of the requiring authority prior to implementing both the land use and subdivision applications should consent be granted. Refer to **Attachment 4**.

#### **Wildlife Authority**

60. The applicant's AEE (pg10) states a Wildlife Authority under the Wildlife Act 1953 will be sought to potentially disturb long-tailed bats as part of the construction works and that an Authority is also likely to be required for lizard management. The requirement for an Authority is not raised in the submission by the Department of Conservation (59). The Department may clarify at the hearing if an Authority is required, and if so, this can be addressed by an advice note should consents be granted.

### **4.3 Activity Status of Applications**

61. The District Plan was made fully operative in October 2017.

62. The applicant has submitted land use and subdivision applications for resource consent for the activities listed in the tables below. In addition, the applicant has applied for consent for a 'Master Plan'. In that regard, it is noted that the provisions in the District Plan raise questions concerning the use of "framework plans" and the principles identified in case law regarding the vires of such an approach. Irrespective of this issue, the applicant has sought consent for specific land use activities, subdivision, and a Master Plan, thereby ensuring that all activities requiring resource consent are authorised, should consent be granted.

63. It is noted that rule 5.3.3.1c) requires the Master Plan to be prepared for the whole neighbourhood according to Volume 2, Appendix 1.2.2.3 of the District Plan. The applicant's Master Plan covers two whole neighbourhoods (Neighbourhoods 3 & 7) and parts of two other neighbourhoods (being Neighbourhood 6 & 8). The extent of the neighbourhoods covered by the applications is depicted in Figure 2.2 in the applicant's AEE (pg 11).

64. Two submissions<sup>1</sup> raise concern with the fact that the application has not provided detail of the proposed development of the "whole neighbourhood" in the Master Plan as submitted (as required in rule 5.3.3.1c). Given that there is no prescribed "default" activity status in the District Plan for an application which does not include a Master Plan for "the whole neighbourhood", I have relied on the "default" activity status in s87B(1)(b) of the RMA which provides that the activity must be treated as a Discretionary Activity. In any event the applications have been bundled to be treated as Non-Complying as explained below.

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<sup>1</sup> Woolworths NZ Ltd (75) and Johnson Family Trust (45)

65. Furthermore, given the clear direction in the case law regarding rules in district plans which purport to enable resource consent for a “plan”<sup>2</sup>, in my view it is prudent to applying the most stringent activity status and to ensure that an application is made for specific land use activities. It follows that any consent that may be granted must also specify the specific land use activities which are authorised. Accordingly, in my opinion, an application can be made for a “Master Plan” (and the specific activities within the neighbourhoods identified) which does not include the whole neighbourhood.

#### Land Use

Rule 5.3.3.2d) – Unless otherwise stated a Master Plan for each Neighbourhood Area identified in the Peacocke Character Zone is a Discretionary Activity.

Rule 5.3.3.1c) - A Master Plan shall be prepared for the whole neighbourhood. Non-compliance with this rule is deemed a Discretionary Activity under s87B(1)(b) of the RMA

Rule 5.3.3.2b) – The activity status for the preparation of a Master Plan application within the Peacocke Character Zone is Non-Complying if an activity that forms part of the application is identified as a Non-Complying Activity in the Activity Status Table (rule 5.3.3.3).

The activity status of the various activities encompassed in the proposed Master Plan are as follows:

<b>Rule</b>	<b>Activity</b>	<b>Activity Status</b>
Rule 5.3.3.3e)	Single dwelling: first residential unit per site based on concurrent subdivision application	Permitted
Rule 5.3.3.3d)	Ancillary Residential Structures	Permitted
Rule 5.3.3.3bb)	Informal recreation and ancillary buildings	Permitted
Rule 5.3.3.3pp)	Walkways and Cycleways	Discretionary
Rule 5.4.8	Fences and walls exceeding permitted height (proposed retaining walls)	Restricted Discretionary

Rule 5.3.3.1d) – Land Use Consents required under 5.4.13 (Provisions in other Chapters of the District Plan) may be incorporated into the consent process for the Master Plan as Discretionary Activities. Land Use consent is required for the following activities:

<b>Rule</b>	<b>Activity</b>	<b>Activity Status</b>
Rule 20.3g)	Construction of a subsoil drain which has an outlet within Significant Natural Area 54	Non-Complying
Rule 22.3p)	Earthworks not otherwise identified within Waikato Riverbank and Gully Hazard Area	Discretionary

<sup>2</sup> *Queenstown Airport Corporation v Queenstown-Lakes District Council* [2014] NZEnvC 93; *Re Auckland Council* [2016] NZEnvC 56; *Re Auckland Council* [2016] NZEnvC 65.

Rule 22.3qq)	Lifeline Utilities – Stormwater Infrastructure only (at ground level) within Waikato Riverbank and Gully Hazard Area	Non-Complying
Rule 22.3ss)	Lifeline Utilities (below ground level) within Waikato Riverbank and Gully Hazard Area	Non-Complying
Rule 25.2.3a)	Earthworks within a Special Character Zone exceeding maximum permitted volumes in a 12 month period	Restricted Discretionary (in accordance with rule 1.1.8.2a))
Rule 25.7.3nn)	Pump stations	Restricted Discretionary
Rule 25.7.3qq)	Stormwater detention, treatment and/or soakage facilities to service more than 1 site	Restricted Discretionary
Rule 25.13.4.1b)	Development of any land involving more than 3 hectares requiring the preparation of an Integrated Catchment Management Plan	Restricted Discretionary
Rule 25.14.3a)	Any activity required to prepare a simple or broad Integrated Transport Assessment by Rule 25.14.4.3	Restricted Discretionary
Rule 25.14.3b)	New transport corridors	Restricted Discretionary

#### Subdivision

<b>Rule</b>	<b>Activity</b>	<b>Activity Status</b>
Rule 23.3a(v)	Fee Simple Subdivision within a Hazard Area	Discretionary
Rule 23.3c(v)(c) and 23.6.11(c) & (i)	Fee Simple Subdivision within the Peacocke Character Zone not in compliance with the requirement to provide a transport corridor connection across the Waikato River to join the existing transport network	Non-Complying
Rule 23.3c.xii	Any subdivision of an allotment containing a Significant Natural Area identified in Volume 2, Appendix 9, Schedule 9c	Discretionary
Rule 25.13.3(b) and 25.13.4.1(b)	Creation of more than 40 allotments requiring the preparation of an Integrated Catchment Management Plan	Restricted Discretionary
Rule 25.14.3(a)	Subdivision requiring the preparation of an Integrated Transport Assessment	Restricted Discretionary

#### National Environmental Standards

66. National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 (NES -CS) – Soil Disturbance exceeding maximum volume under Regulation 8(3) and land use change without a Detailed Site Investigation are Discretionary Activities.

#### Overall Activity Status and Bundling

67. The land use and subdivision applications and associated application for soil disturbance with the change of use of land under the NES-CS are inextricably linked for the purpose of developing the site for urban development. For these reasons the consents should be bundled and considered overall as a Non-Complying Activity (being the most restrictive activity classification).

## 5 SUBMISSIONS

68. In accordance with s95(2)(a) of the RMA, the applicant requested public notification. The applications were publicly notified on 1 September and the submission period closed on 28 September 2018.
69. A total of eighty-two (82) submissions were received to the applications. Thirteen (13) of these submissions are in full or partial support, sixty-one (61) are in opposition, six (6) support in part and oppose in part, and two (2) submissions are neutral.
70. The majority of submissions in support do not contain a lot of detail or reasons. The comments and matters identified within the submissions in support include;
- Proximity to our property.
  - Support development, but roading needs to be improved and appropriate infrastructure in place before development starts.
  - Support development, but not the name of development. Should be an appropriate Maori name.
  - Development will provide much needed housing for Hamilton.
  - Support change of land use to residential, but need to carefully consider riverside reserve land and quality of housing adjacent.
  - Tangata Whenua Working Group (41) supports in principle the applications, but retains concerns around the proposed installation of the wastewater pipe under the bed of the Waikato River.
  - Te Ha O Te Whenua O Kirikiriroa (60) supports the proposal given the successful consultation and appropriate mitigation measures regarding iwi issues have been provided for adequately.
  - Neighbourhood Area 6 suitable location for Suburban Centre, but needs to be cohesively planned – Woolworths NZ Ltd ((75).
  - Heritage NZ (62) supports proposal subject to proposed heritage reserve remaining part of the development and the appropriate on-going management of historic heritage.
  - Waipa District Council (63) conditional supports proposal subject to road safety of SH3 maintained during and post construction, particularly the SH3-Dixon Road and Raynes Road intersections.
  - NZ Transport Agency (70) supports the proposal subject to conditions to address the potential traffic safety and efficiency effects on the state highway network in

the area by staging the development with traffic monitoring required prior to further stages proceeding

- Ministry of Education (18) is considering provision for additional school network capacity long term in the Peacocke Area and requests ongoing consultation with applicant and HCC on staging and timing of development to manage the impact on the school network.
- WEL Networks (69) confirms it is able to supply the required electricity reticulation but requires sufficient road berm space to house all utilities and requests early engagement to determine infrastructure requirements and any legal arrangements.

71. The submissions in opposition cover a number of issues with transportation (construction and operational) and biodiversity effects being the key issues.

72. The key comments and matters raised in opposition to the applications include:

- Traffic safety and efficiency effects on surrounding road network during construction and post development
- Development not to proceed or to be restricted ahead of planned transport infrastructure (including new bridge)
- Inadequate provision for pedestrians and cyclists
- Need for increased ecological buffer along river margin
- Inadequate measures to address effects on indigenous fauna (particularly long-tailed bats)
- Visual amenity impacts for residents opposite site on eastern side of Waikato River
- Lack of subdivision and building design controls to ensure a high amenity development
- Inadequate open space provision within the development
- Amenity effects during construction
- Loss of Maori archaeological sites
- Pollution of waterways, public health and natural hazard risks associated with three waters infrastructure
- Cultural effects associated with interim wastewater pipe under the bed of the Waikato River
- Suburban Centre (within Neighbourhood 6 of the Peacocke Structure Plan) has not been cohesively planned with the balance of the neighbourhood area on land outside the application site

73. Six submissions partly support and partly oppose the applications. Development of the land for residential purposes is supported however in brief the aspects of the proposal that are not supported are:
- The name of the development, an appropriate Maori name should be used.
  - Development should not proceed ahead of provision of key infrastructure.
  - Rooding network needs to be improved before development proceeds to cater for increase traffic.
  - Development needs to be staged to allow for rooding network upgrades
  - Lack of design standards for duplexes/townhouses.
  - Road cross sections that do not provide off road shared paths for walking/cycling
  - Road improvements that do not safely provide for pedestrians/cyclists and inadequate off-road cycle facilities connecting to the subdivision.
  - Lack of provision of a sports park
  - Option of wastewater discharge from the development to the western inceptor is opposed based on capacity constraints.
  - HCC submission (65) also seeks three waters infrastructure to be sized to service the full catchment and expects a PDA to be entered into to cost share any increase in capacity; disconnection of the interim eastern wastewater option and connection to HCC strategic transfer pump station when operational; internal roads are sized to accommodate the required servicing infrastructure; development to cater for public transport; staging and sequencing of development not to frustrate development of adjacent land; development of commercial centre to align with rate of residential development; road corridors are sized to service catchment and PDA be entered into with HCC to cost share any increase in capacity; Peacockes Road south of the east-west arterial to be of minor arterial standard, conditions of consent to manage traffic safety and efficiency on the surrounding road network; and required approval sought from HCC as Requiring Authority for works that extend within the Southern Links Designation.
74. Two neutral submissions (29 & 42). One seeks additional planting, more open space areas and provision of a sports park; and the other seeks the addressing of possible sewerage overflows in the network.
75. Given the substantial number of submissions, I have not tabulated a summary of issues nor assessed the relative number of submissions which have raised any particular submission point. The majority of matters raised in the submissions are addressed in the evidence of the technical experts appended to this report. I have relied on those expert statements for my assessment of environmental effects. Where appropriate I have made specific reference to some submissions in my assessment.



76. There are also a number of submission points which due to their scope and content (eg. the name of the development 'Amberfield'), I do not address further in terms of statutory resource management considerations. In this regard the submission from Ministry of Education (18) requests that Council and the applicant consult with the submitter on the staging and timing of the development to help understand the potential impact on the school network and to work together to help develop walking and cycling connections to existing and new education facilities. It is my understanding that consultation is occurring between the submitter and Council regarding the development of the Peacocke area. The relief sought by the Ministry of Education is however outside the scope of conditions which can be imposed on the resource consents.

## 6 STATUTORY PROVISIONS

77. The proposal by the applicant requires land use and subdivision consents under the provisions of the District Plan as a non-complying activity. The Resource Management Act 1991 (RMA) sets out the statutory provisions for the assessment and determination of all such applications with Section 104 providing the primary assessment framework.
78. The following discussion provides a summary of the relevant statutory sections of the RMA.

### 6.1 Resource Management Act 1991 (RMA)

79. Part 2 of the RMA provide the purpose of the RMA which is '*.. to promote the sustainable management of natural and physical resources*' with sustainable management defined in subsection 5(2), as

*managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—*

- (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
- (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

80. Section 6 sets out *Matters of National Importance*, with matters 6(a), (c), (d), (e), (f) & (h) considered relevant to the applications;

*In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:*

- (a) *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development:*
- (c) *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (d) *the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers:*
- (e) *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- (f) *the protection of historic heritage from inappropriate subdivision, use, and development*
- (h) *the management of significant risks from natural hazards.*

81. Section 7 sets out *Other Matters*, which the Commissioners shall have particular regard to with the following matters relevant to the applications;

- (b) *the efficient use and development of natural and physical resources:*
- (c) *the maintenance and enhancement of amenity values:*
- (f) *maintenance and enhancement of the quality of the environment:*
- (g) *any finite characteristics of natural and physical resources:*

82. Section 8 requires the principles of the Treaty of Waitangi to be taken into account.

83. Section 104(1) of the RMA states:

*When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*

- (a) *any actual and potential effects on the environment of allowing the activity; and*
- (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
- (b) *any relevant provisions of—*
  - (i) *a national environmental standard:*
  - (ii) *other regulations:*
  - (iii) *a national policy statement:*
  - (iv) *a New Zealand coastal policy statement:*
  - (v) *a regional policy statement or proposed regional policy statement:*
  - (vi) *a plan or proposed plan; and*
- (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

84. Section 104(B) of the RMA states:

*After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—*

- (a) may grant or refuse the application; and*
- (b) if it grants the application, may impose conditions under section 108.*

85. The non-complying status of the applications is also subject to the threshold tests for non-complying activities as prescribed in Section 104D of the RMA which states:

*Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*

- (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
- (b) the application is for an activity that will not be contrary to the objectives and policies of—*
  - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
  - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
  - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

86. Section 104D is commonly known as the “gateway test” and proposals for non-complying activities must satisfy either clause (a) or (b) of the section. An analysis of the proposal against these provisions is set out at Sections 7 -9 below.

87. The subdivision application is also subject to the provisions of s106 of the RMA.

- (1) [A] consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that—*
  - (a) there is a significant risk from natural hazards; or*
  - (b) Repealed.*
  - (c) sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.*
- (1A) For the purpose of subsection (1)(a), an assessment of the risk from natural hazards requires a combined assessment of—*
  - (a) the likelihood of natural hazards occurring (whether individually or in combination); and*
  - (b) the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and*
  - (c) any likely subsequent use of the land in respect of which the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b).*

- (2) *Conditions under subsection (1) must be—*
- (a) *for the purposes of avoiding, remedying, or mitigating the effects referred to in subsection (1); and*
- (b) *of a type that could be imposed under section 108.*

88. The following assessment considers the land use and subdivision applications in terms of the relevant assessment matters of the RMA. These are (in the order they are discussed in this report):

- Assessment of Environmental Effects (section 7)
- Objectives and Policies of the District Plan (section 8)
- Conclusion regarding s104D RMA (section 9)
- Assessment of the application pursuant to s104 RMA (section 10)
- Assessment in terms of the statutory documents (section 11)
- Other Matters (section 12)
- S106 RMA Considerations (section 13)
- Consideration of Part 2 Matters (section 14)

## **7 ASSESSMENT OF ENVIRONMENTAL EFFECTS**

89. The applicant's AEE provides in Section 5 a detailed assessment of the effects of the proposal and concludes that the effects of the proposal overall are more than minor, such that the proposal does not pass the first limb test of s104D of the RMA. I concur with this conclusion that adverse effects of the proposal are more than minor as demonstrated in my evaluation of the effects of the proposal set out below.

90. As noted in pre-ambule to this report, a number of technical experts were engaged by HCC to undertake assessment of effects of the application relating to specific areas of expertise and relevant to the territorial authority's jurisdiction. For the purpose of this report, the assessment of effects endeavours to make comment in respect of all the potential environmental effects either examined by the applicant or raised by submitters. The assessment is presented under eight topics being:

- Visual/landscape effects
- Heritage and Cultural Effects
- Natural Hazard Effects
- Hazardous Substances Effects
- Ecological Effects
- Construction Effects
- Transportation Effects
- Three Waters Infrastructure and Servicing Effects

### **7.1 Visual/Landscape Effects**

91. The subject site is located within the Stage 2 of the Peacocke Structure Plan area, which provides for and enables managed urban development through the masterplan provisions of the District

Plan. The future development of the area will result in a significant change to the existing rural character and associated visual amenity. There is no requirement within the District Plan to maintain this existing character or associated visual amenity and an assessment of such effects associated with the residential development of the subject site needs to be considered in this context.

92. The applicant provided a Landscape and Visual Effects Assessment (Appendix D), and a more detailed assessment (Appendix A) in response to the Council's further information request. These assessments including the applicant's addendum assessment in response to changes in the development layout in the north-east part of the site have been reviewed by Mr Mansergh and his assessment is included as **Appendix A**.

93. Mr Mansergh is of the opinion that the applicant's Landscape and Visual Effects Assessments (LVE) when read in conjunction with other relevant reports and plans contained within the application provide a good understanding of the changes that will occur. He is also of the view the assessment approach is generally consistent with the "accepted professional practice" currently used in New Zealand and the recommendations contained within NZILA *Best Practice Note: Landscape Assessment and Sustainable Management 10.1*. Mr Mansergh notes the visual effects ratings presented in the LVE take the zoning of the site and Peacocke Structure Plan into consideration as part of the baseline of analysis. This means that the effects of activities anticipated by the District Plan have been discounted.

94. Mr Mansergh's findings and taking into account the submissions received relating to landscape and visual amenity issues are:

*"I concur with the LVE assessment that the change in landscape and visual amenity is most likely to affect viewing audiences located within the residential areas to the north of the site (Riverlea). From these locations there will be a loss of visual amenity associated with the current rural outlook. From other locations, the landscape and visual effects will be far less pronounced.*

*I concur with the addendum assessment that concludes that the proposed changes to the Amberfield subdivision (in response to the ecological submissions) to be beneficial in both landscape (including natural character) and visual effects terms although not substantially altering the overall scale of effects of the development as originally assessed.*

*While some differences exist between the visual effect ratings provided within the LVE and those identified by submitters, these can be explained by a difference in the assessment baseline. Regardless, at the end of the day it is recognised within the LVE that a substantial change to the existing (physical) environment will occur.*

*I consider that, in general the effects ratings are supportable, however from specific locations with direct views towards the site; effects are likely to be greater than indicated in the LVE reporting. These areas include elevated locations on the eastern side of the Waikato River, where existing amenity is influenced by views over the existing rural landscape. Effects from these locations will be partially mitigated by the proposed esplanade reserve planting.*

*I consider that it is important to note that any change in existing landscape character and visual amenity associated with the existing rural characteristics of the site must be considered within the context that the urbanisation of Peacocke Structure Plan area is indicated in the district plan and has been flagged by the planning provisions since 1989. As such, the maintenance of rural character within this area cannot be relied upon long term."*

95. I rely on Mr Mansergh's assessment of the potential landscape and visual effects of the proposed development and consider the effects to be acceptable and no more than minor, based on the proposed layout of the development as set out in the masterplan and open space network plans. Apart from the development being in general accordance with these plans Mr Mansergh does not have any specific recommendations relating to consent conditions.

### **7.3 Heritage and Cultural Effects**

96. The applicant's archaeological assessment identifies eleven archaeological sites consisting of discrete Māori horticultural soil areas as affected by the development based on auger surveys of areas of archaeological potential and monitoring and recording of test pits excavated for geotechnical reasons. The quantity and quality of the information the sites contain is unknown. The applicant's archaeological assessment report states:

*"Information value is affected by the condition of [the] archaeological sites, which we know to be variable with part of some sites destroyed by activities such as sand quarrying and the construction of buildings with other parts adversely affected by modern cultivation."*

97. The location of the eleven sites is identified on Figure 28 of the applicant's archaeological assessment (Appendix Q, page 41). One of these s14/176 located in the northern part of the site is listed in the District Plan as A100 and is scheduled as a Group 2 Archaeological and Culture Site. The District Plan map 57B shows this site as a polygon over a large area of the northern part of the site. This relates to the legal description of the property of the recorded archaeological site rather than its precise location.

98. It is noted that there are no District Plan controls for Group 2 Archaeological and Cultural Sites. Group 2 sites are listed for information purposes only. Earthworks within these sites under the District Plan is a listed Permitted Activity. Group 1 sites scheduled in the District Plan on the other hand are determined to be significant archaeological and cultural sites, and earthworks within these areas are a Restricted Discretionary Activity. Regardless of the District Plan status for Group 2 Archaeological and Cultural Sites, an Authority from Heritage New Zealand under the Heritage New Zealand Pouhere Taonga Act 2014 is required to modify or destroy an archaeological site.

99. The earthworks proposed is estimated to destroy some 85% of the probable archaeological deposits associated with the eleven sites. The applicant acknowledges the effects will be more than minor in terms of RMA s104D and I concur. The primary mitigation methods to remedy the adverse effects proposed by the applicant's archaeological assessment are:

*a. Archaeological site investigation based on the conditions and requirements of an archaeological authority issued under the Heritage New Zealand Pouhere Taonga Act 2014;*

- b. *Creation of a historic heritage reserve containing Māori borrow pits and associated sub-surface deposits. Provisions for the reserve include preparation of a managed plan based on the principles of the ICOMOS New Zealand Charter 2010;*
- c. *The development of interpretive records in conjunction with manawhenua that could include interpretation panels, pou or other installations; and*
- d. *Cultural recognition expressed in place, trail and street naming.*

100. Heritage New Zealand issued a ten-year archaeological authority (refer **Attachment 2**), to the applicant on 29 August 2018. The general authority permits earthworks on eleven archaeological sites identified in the Amberfield Subdivision development based on specific conditions. For example, the archaeological work is to be carried out in accordance with the Amberfield Archaeological Site Management Plan and the Amberfield Mitigation and Research Strategy.
101. Ms. Simmons has reviewed the applicant's archaeological assessment (refer **Appendix B**) and is of the opinion it provides a thorough and robust review of the heritage values of the site effected by the proposed earthworks, and of the proposed heritage reserve which will provide a representative component of the archaeological landscape across the site. The proposed heritage reserve of 1.59 hectares is shown as proposed Lot 1510 on the subdivision plans and is in the southern portion of the site adjacent to the Waikato River. The assessment has demonstrated that the archeological materials in the area encompassed by the reserve remain in good condition and will provide a good example of a typical pre-European Māori gardening landscape.
102. In summary, Ms Simmons concurs with the applicant's archaeological assessment that the archaeological values of the eleven site areas affected by the development earthworks are associated with the information they contain and vary contingent on post Māori land use. Based on this and taking into account the submissions raising archaeological concerns her assessment concludes that *'the primary mitigation proposed, systematic archaeological investigation and recording, is an appropriate action to remedy the loss of archaeological information as a result of earthworks. Heritage New Zealand Pouhere Taonga has issued a 10 year authority (Authority no. 2019/069) for the mitigation of effects for the eleven sites.'* This will ensure the appropriate investigation and recording of the sites occurs.
103. Ms Simmons also supports the other mitigation measures proposed in the applicant's archaeological assessment primarily in relation to the creation of the heritage reserve which she considers to be archaeologically significant. She has recommended a framework of conditions should consent be granted to ensure the archaeological heritage management principles and intent of the RMA, WRPS and District Plan are adhered to, and will adequately address the mitigation measures sought in the submission (62) by Heritage New Zealand. It is not considered within the jurisdiction of the Commissioners to impose a condition that the applicant develop a heritage interpretation strategy for the site as requested in the submission from Heritage New Zealand.



104. The framework conditions proposed by Ms Simmons have been encapsulated in the suite of recommended conditions in **Attachment 4**. The recommendation for a management plan to be prepared by the applicant prior to the vesting of the Heritage reserve in Council, requires consultation with tangata whenua as well the Council's Parks and Recreation Unit to ensure the ongoing management goals can be delivered.
105. The identified archaeological features on the site all relate to Māori occupation. The applicant's archaeological assessment has identified a number of former pa sites as part of the archaeological landscape in the surrounding development area, with one important paa bordering the south-east boundary of the site (Nukuhau Paa). The site and locality have extensive pre-European Māori history and is of high cultural significance. A Cultural Impact Assessment (CIA) forms part of the supporting documentation (Appendix P) submitted with the applications and was prepared at the request of the Tangata Whenua Working Group (TWWG). The TWWG is made up of mandated representatives from each of the Waikato-Tainui hapuu within the vicinity of the site – being Ngaati Wairere, Ngaati Maahanga, Ngaati Hauaa, and Ngaati Tamainupo. The CIA was guided by consultation with two representative groups, Te Ha o te Whenua o Kirikiriroa Committee (THAWK) and Nga Mana Toopu o Kirikiriroa (NAMToK).
106. The CIA documents the Māori history, values, ecological and environmental interests in relation to potential impacts of the proposed development, and has been informed by the applicant's master plan, archeological and ecological assessments, engineering plans and the Sub-Catchment Integrated Management Plan (SC-ICMP) for the management of stormwater and wastewater. The CIA states that 'the TWWG representatives have been engaged during the master plan and their issues and opportunities have been considered as part of the protection and enhancement of cultural and heritage sites and features'. In addition, 'consultation with TWWG gained support in principle for the stormwater management systems in the proposed Integrated Catchment Management Plan and expressed a preference for the wastewater design and route via Far Eastern Interceptor through an interim pipe under the Waikato River and a joint pipe from the river crossing Crosby Road, to the Hamilton municipal wastewater treatment facility'.
107. The TWWG considers the whole Amberfield site a waahi taonga area. They endorse the proposed heritage reserve as a cultural values recognition of the identified archaeological sites, which will provide opportunity for interpretative recognition of the ancestral landscape. This will also be reflected in the applicant's intention to use cultural indigenous place making throughout the development through street naming, use of indigenous plant species, landscape design that reflects cultural perspectives (particularly for the Heritage reserve). The CIA also records the TWWG support the applicant's ecological management plan which includes a range of measures to address effects on indigenous flora and fauna.
108. The recommendations of the CIA have been encapsulated in the recommended suite of conditions in **Attachment 4**, where such recommendations are within the scope of s108, s108AA and s220 of the RMA. Some recommendations relating to on-going involvement of mana whenua and tangata whenua partnership outcomes are considered to be outside the scope of conditions which may be imposed on the resource consents.

109. THAWK has lodged a submission (60) in support of the development because of the successful consultation the applicant has undertaken with mana whenua and the appropriate mitigation measures regarding iwi māori issues provided for accordingly. The TWWG has also lodged a submission (41) supporting the development in principle, and seeks Council impose conditions that reflect the mitigation recommendations as set out in the CIA. Notwithstanding, the TWWG retain concerns around the installation of the wastewater pipe under the bed of the Waikato River. This is due to the metaphysical and spiritual importance of the Waikato River, and the potential harm to the mauri and mana of the river. In this regard, they seek the utilisation of the wastewater pipe under the river be limited in time through the installation of the permanent pipe across the river on the new bridge as early as possible. As noted in Section 3.2 above the completion of these works is expected in late 2023.
110. Waikato-Tainui has also lodged a submission (52) opposing the applications because of concerns around the proposed installation of the wastewater pipe under the bed of the Waikato River and the proposed bridge. The submission also states the Waikato River Clean Up Trust has not been formally engaged and/or consulted by Council as per s47 of the Waikato River Act. The submitter seeks consultation be undertaken with the Trust under the Waikato River Act prior to any resource consent being approved.
111. With respect to the proposed bridge, the Southern Links Designation and related Waikato Regional Council consent as discussed in Section 3.3 above provides authority for those activities (including a waste water pipe fixed to the bridge) to be carried out. As such s47 of the Waikato River Act is not engaged. The proposed interim wastewater pipe under the Waikato River is a Regional Council matter and does not fall within the jurisdiction of HCC. For completeness it is understood that the activity under the Waikato Regional Plan is a permitted activity, and the applicant has advised that it has not sought consent from the Waikato Regional Council for this activity. It would be helpful if the applicant provided confirmation of this at the hearing. In any event s47 of the Waikato River Act is not engaged in relation to the applications required from HCC.
112. The submitters will have the opportunity at the hearing to raise any concerns they may have with the recommended conditions to address māori cultural issues.
113. I consider the effects on heritage values to be more than minor given the extent of destruction of archaeological features across the site which cannot be avoided or directly mitigated. The applicant's proposed mitigation measures are considered by Ms Simmons to be appropriate and can be implemented through the recommended conditions. Relying on her expert advice I am of the view that the adverse effects on heritage values will be acceptable.

#### **7.4 Natural Hazard Effects**

114. The applicant's AEE and supporting Geotechnical Report by EnGeo Ltd (Appendix J) describe the site as broadly flat encompassing several broad river terraces steeping down from the west to the east with steep transition slopes between terraces and large steep free face slopes down to the Waikato River with a gully cutting through the central-southern portion of the site. The

existing soil conditions predominantly consist of sandy silts with some sand/clay material in the higher land close to Peacocke Road. The potential natural hazard risks associated with the development of the site are identified in the application supporting documentation as land instability, flooding and liquefaction.

115. The District Plan identifies the river terrace and gully (given the slopes and soil types) as areas of land more susceptible to instability risk. These areas are identified on the District Plan maps by a Waikato Riverbank and Gully Hazard Area, and Waikato River Bank Stability Area Overlays (refer to **Attachment 1**). Additional controls apply to development within these areas and there are setback requirements for nearby new development. No residential lots are fully proposed within these overlay areas (refer s92 response Appendix P). The original subdivision layout had one residential lot (Lot 299) in the north-east part of the site fully within the Waikato Riverbank and Gully Hazard Area and land use consent was sought for a dwelling building platform within this lot. With the subsequent changes to the layout in the north-eastern part of the site to increase the setback of the development from the Waikato Riverbank this lot no longer exists, and land use consent is therefore no longer required for this activity.
116. The proposal is not seeking to modify the land within the areas identified in the District Plan as potentially more susceptible to land instability. The proposed development seeks to retain as much as possible of the existing landform and the overall terraced topography sloping east towards the Waikato River. The earthworks design seeks to contour the site to provide suitable building platforms reducing the need for retaining walls or other extensive cut and fills to enable building construction (at the dwelling construction stage). The cut and fill earthworks plans are provided as an appendix to the applicant's Civil Infrastructure Report (Appendix W) and have been updated in response to the changes in the north-eastern part of the site (Appendix E of the Addendum AEE received on 25 February 2019).
117. The slope stability analysis by EnGeo Ltd has identified specific areas of the site where development should be avoided and areas where some geotechnical engineering remedial measures will be required to achieve stable ground suitable for development (refer to the Geotechnical Constraints Plan attached as Appendix 3 to the Geotechnical Report). The design of the development has sought to avoid the areas where the risk of slope stability is high or is unable to be remediated by reasonable engineering solutions. The high-risk areas are proposed to be incorporated into the open space areas and modification to the landform avoided. It is noted that the Geotechnical Constraints Plan have not been updated in response to the changes in the development in the north-eastern part of the site. EnGeo Ltd have reviewed the amended earthworks plans for this area of the site and conclude the effect on geotechnical issues is positive as the toe of proposed embankments have been moved further away from the critical parts of the river bank and slopes have not been steepened.
118. The Geotechnical Report and subsequent further information on ground conditions, slope stability and seismic risk (including the independent peer review) have been reviewed by Mr Brzeski and his assessment is included as **Appendix C**. In Mr Brzeski's opinion, *'EnGeo Ltd have adequately considered slope stability for the proposed development and suggested potential mitigation measures such as reinforced slopes and subsoil drains to achieve acceptable factors*

*of safety, all of which appear appropriate but will need further investigation, analysis and specific engineer design. The analysis should be repeated at detailed design stage once the geological model has been refined and comprehensively reviewed. Slope stability analyses should also be repeated in the event of any changes to the proposed ground levels or batters. This is especially relevant given the changes to the northern parts of the site.* Mr Brzeski also concurs with the EnGeo Ltd assessment of the changes to the north-eastern part of the site.

119. EnGeo Ltd made no specific reference to the bridge and culvert that cross the gully to the Island area in their Geotechnical Report. The subsequent s92 response confirmed that the ground was suitable for these structures subject to further investigation and specific design. In Mr Brzeski's opinion, given this statement and the presence of specific investigations in these locations, this is sufficient for this stage of the project and will be further addressed as the detailed design stage.
120. EnGeo Ltd have made a number of recommendations for earthworks (section 14.9 to 14.12 of the Geotechnical Report). These are supported by Mr Brzeski and in his opinion a full earthworks specification with associated standard detail drawings should be developed at detailed design stage that covers topics including, but not limited to gully filling, material suitability, pumiceous silts, benching of slopes, cut and fill batters, unsuitables and surface and subsoil drainage. He also notes some site-won fill materials may not be suitable for re-use.
121. The liquefaction hazard has been assessed as "low to moderate" and is shown on a plan of liquefaction potential. These categories are in line with the MBIE Module 3 guidelines on liquefaction identification, assessment and mitigation. The recommendations of the liquefaction peer review are for further investigation and assessment to determine what mitigation is required in the parts of the site that have been assessed as having a "moderate" risk of liquefaction-induced ground damage occurring in the 1 in 500-year seismic event. This is supported by Mr Brzeski, and in his opinion can appropriately be undertaken at the detailed design stage and any specific foundation requirements can be addressed by consent notice on the respective residential lots.
122. In conclusion Mr Brzeski states *'it is my opinion that geotechnical constraints for the subdivision have been adequately considered through intrusive investigations, monitoring, assessment and analysis. More information is required at detailed design stage to confirm the recommendations made at Resource Consent stage. It is my opinion that, subject to compliance with the recommended conditions as set out below, the Amberfield subdivision works can be undertaken without an adverse effect on Natural Hazards'*.
123. Mr Brzeski has recommended a number of conditions to ensure the subdivision works will result in suitable building platforms for residential development with respect to risk from geohazards. Noting that some areas will require specific engineer design to mitigate the effect of geohazards. The recommended conditions are incorporated into the suite of recommended conditions in **Attachment 4**.

124. The potential flood hazard risk has been reviewed by Mr Clarke (refer **Appendix G(a)**). In his opinion the impact of flooding from development of the site needs to consider free drainage of upstream areas, safe conveyance of secondary flows within the site and avoiding vulnerability from floodwater reaching the site in this case from the Waikato River.
125. Mr Clarke has recommended consent conditions to ensure the free drainage of upstream areas and the safe conveyance of secondary flows through the site, which he considers can be accommodated with minor earthworks adjustments with the current layout and easements through downslope properties in favour of upslope properties to convey stormwater secondary flows to Road reserve or Jointly Owned Access Lots (JOALs). The assessment of overland flow depths and velocities and any modifications to the earthworks and road design to meet flood depth requirements can be addressed at the detailed design stage.
126. The potential flood risk from the Waikato River has in Mr Clarke's opinion several aspects to consider:
- 100-year ARI event including climate change design levels.
  - Dam Break Scenario risk
  - Impacts of infilling on river flood conveyance
127. Mr Clarke is satisfied that the applicant's flood risk assessment (Appendix R and s92 response) and taking into account modifications in the northern part of the site with the lowest developed area being lifted by approximately 1.7 metres has demonstrated that the 100-year ARI flood risk in the river accounting for climate change is adequately mitigated. He notes that the Waikato River system is controlled by releases from a series of hydro dams and therefore risks of extreme flows are less likely.
128. The applicant's Karapiro dam break scenario provides a level of 26.3m RL. With the northern redesign Mr Clarke indicates approximately 25 houses on Road Two would be affected by this scenario. The applicant's flood risk assessment concludes that risk management of a Dam Break Scenario has a remote possibility of occurrence and it would be expected that regional civil defence emergency procedures would be implemented in such an unlikely event. Mr Clarke concurs with the low likelihood of risk.
129. Mr Clarke confirms that the altered design in the northern area has removed any infilling within the Waikato River 100-year floodplain and therefore impacts on water levels through the site from infilling are no longer a potential impact.
130. Relying on the technical experts I am satisfied that the recommended conditions for managing potential natural hazard risks will ensure that the effects will be no more than minor and any potential risks to future occupiers will be appropriately mitigated.

## **7.5 Hazardous Substances Effects**

131. A greenfield site proposing substantial earthworks, change of land use for urban development and associated subdivision is required to be considered under the National Environmental Standards for Contaminated Soils (NESCS) regulations as the land is more likely than not to have

been subject to a variety of agricultural or horticultural practices that could have resulted in soil contamination.

132. This assumption was confirmed by information gathered as part of a Preliminary Site Investigation (PSI) done and reported by a suitably qualified person on behalf of the applicant (refer Appendix K of the application documents). The PSI has established based on a variety of historical information and site walkover that multiple HAILs are known or suspected to have been, or currently are, present at the site. Given the identification of these potentially hazardous activities on-site, further detailed investigation is required to determine if the concentration of contamination in the soil exceeds the applicable human health standard.
133. The Council's Contaminated Land Officer (refer to memo in **Appendix D**) has recommended a number of conditions to ensure the necessary investigation (DSI) is undertaken prior to any soil disturbance works commencing, and remediation and /or management is undertaken to ensure effects on human health of future site users and the environment is generally unlikely. The recommended conditions are encapsulated into the suite of recommended conditions in **Attachment 4**.
134. I am satisfied that the recommended conditions for managing potential contaminated soils will ensure that the effects will be no more than minor and any potential health and safety risk to future occupiers will be negligible.

## 7.6 Ecological Effects

135. The applicant's Terrestrial Ecology Report (Appendix G to the AEE) has assessed the terrestrial ecological values of importance (flora and fauna) of the site and the effects on those values by the proposed development. The assessment has been subject to further analysis through the further information ecology response and caucusing of technical experts on behalf of the applicant, Department of Conservation and Riverlea Environment Society Inc (as submitters), and Mr Kessels. As outlined in Section 4.1 above the applicant proposed changes to the design of the subdivision in the north-east part of the site to address the ecological effects on the nationally threatened long-tailed bat. The changes were received by Council post notification of the application on 25 February 2019, together with additional information relating to the proposed east-west shelterbelt received on 27 March 2019.
136. Mr Kessels has provided a Statement of Evidence which also responds to submissions related to terrestrial ecology (Refer **Appendix E**). Appended to his evidence is the signed Joint Witness Statement from the terrestrial ecology caucusing.
137. In Mr Kessels opinion, overall the desktop and field survey methods undertaken by the applicant's ecologist to identify the ecological values and effects of the proposal are consistent with best practice. He concurs with the applicant's assessment that the potential adverse effects on indigenous avifauna, terrestrial invertebrates, lizards and habitats is likely to be low subject to appropriate avoidance, remediation and measures as outlined in his evidence. This position was also supported by the relevant technical experts at caucusing as confirmed in the signed

Joint Witness Statement. Suitable conditions to address the potential adverse effects are included in the recommended conditions in **Attachment 4**.

138. There are two scheduled Significant Natural Areas (SNA 48 & 54) within the river margin of the application site as identified on the District Plan maps in **Attachment 1**. No physical works are proposed within these SNA areas apart from one subsoil drain which will require limited disturbance to construct. The vegetation that will be removed to accommodate the development has been assessed in the applicant's Terrestrial Ecology Report (TER) as being of low botanical value and will be significantly enhanced by the proposed buffer and amenity planting along the river margin and the further large area of planting proposed within the southern gully. In total some 18.5 hectares of mainly indigenous trees and planting will enhance the ecological values of the site as well as providing amenity values and habitat values for native fauna. Mr Kessels concurs with this assessment and has recommended appropriate procedures to be followed prior to the removal of any potential long tailed bat roosting trees.
139. The key issue regarding ecological effects concerns the question of adverse effects on the long-tailed bat arising from the Amberfield development. The potential impact on long-tailed bats are identified at paragraph (59) of Mr Kessels statement of evidence, associated with the removal, hinderance or prevention of:
- a. *The use of foraging habitats and/or the ability to disperse to foraging habitats;*
  - b. *The ability of long-tailed bats to commute across the landscape to forage and/or utilise other known or potential roosting habitats (such as Day Roost 32 or Maternity Roost 8 as mapped in Appendix 2) nearby to the site; and*
  - c. *The ability of juvenile long-tailed bats to disperse away from maternal roost sites to preferred habitats within the southern Hamilton locality.*
140. Mr Kessels at paragraph 65 of his evidence agrees with the original TER that the magnitude of the effect is 'Very High' in accordance with the EIANZ guidelines and warrants avoidance and/or extremely high intensity mitigation and remediation actions. In his opinion as stated at paragraph (67) *'There is insufficient information at present to understand how the site is being utilised in its entirety by long-tailed bats. However, the development proposal will likely remove areas of foraging which are located nearby to known high habitat value areas and temporary roosting habitat. This will potentially disrupt commuting corridors along the river and across the site and wider landscape to the known high value habitats.'*
141. A range of avoidance, remediation and mitigation measures have been proposed by the applicant, as presented in the TER and the Amberfield Ecological Assessment Addendum (AEAA), to address these 'Very High' potential adverse effects on long-tailed bats in accordance with the EIANZ guidelines. Taking into account the additional measures proposed by the applicant in the AEAA (increased river buffer margin and additional planting in the north-east part of the site increasing the setback from of the development from Hammond Bush and retention and enhancement of the east-west shelterbelt to maintain connectivity across the site) the AEAA assessment of the magnitude of the effect has now shifted from 'Very High' to a 'Low' level of effect (section 3.3.2 AEAA). Noting that this will become a positive effect in the long term (20+ years) as the restoration plantings reach maturity.



142. Mr Kessels does not accept the conclusion in the AEAA that the magnitude of effect of the proposed development on the long-tailed bat population will be 'Low' because of the widening of the river buffer and the creation of the East-West shelter belt. He does not consider there is sufficient scientific evidence presented to reach this conclusion and there is no certainty or evidence supplied in the AEAA to justify the conclusion that there *"will then become a positive effect in the long-term (20+ years) as the restoration plantings reach maturity"*.
143. Mr Kessels disagrees with the Applicant's ecology expert's conclusion that the magnitude of effect is 'Low'. His assessment has concluded this to be 'Moderate' which results in an overall level of effects to be 'Very High' using the EIANZ guidelines (paragraph 71). He nevertheless supports the proposed mitigation to address the direct effect on bats. As outlined above, the applicant has proposed mitigation which will avoid adverse effects on the Waikato River corridor habitat and will provide additional mitigation planting to remedy or mitigate the adverse effects on Long-Tailed bats. This mitigation includes the proposed river buffer, the "East-West" shelterbelt, as well as the extensive planting of the southern gully area. I have recommended conditions which require this mitigation to be completed.
144. However, both the applicant's ecologist and Mr Kessels agree there will be a residual effect during the time when the mitigation planting becomes established. The applicant's ecologist considers this *'short/medium term residual effect will not have a population-level impact on the Hamilton city bat population and the proposed mitigation will have a net positive effect in the long term (20+ years)'* (section 3.3.3 AEAA). Mr Kessels does not accept the conclusion that the residual impact requires no mitigation, as no evidence has been provided to substantiate that position. He considers the temporary residual effect warrants a biodiversity offset or compensation response.
145. What is less clear is the extent of the "residual" adverse effects on Long-Tailed bats. It would be helpful if the applicant could provide evidence which demonstrates the level of residual effects on Long-Tailed bats. This would help provide a basis on which to set the compensation/off-set mitigation value. I consider it important to achieve as much certainty as possible regarding the residual adverse effects and to have a clear understanding of what these will be (i.e., the significance of the effect), and how to respond to that. Mr Kessels states in his summary that he *'does not consider these residual effects to be so significant that avoidance is the only option available'*. He then goes on to say that if the residual effects are not addressed that the Amberfield Development will *'create adverse effects which could be "significant"*.
146. I understand that the "residual effects" relate to the time frame between when the mitigation planting is carried out and when it is established enough to provide habitat for bats – primarily for pathways to the Waikato River corridor. Therefore, the "residual effect" will be in play for at least 10 years. Mr Kessels recommends a biodiversity compensation payment or offset mitigation condition to mitigate this effect, albeit that he is unable to determine a quantum at this stage. This is largely due to the lack of clarity on the timing of the various stages of the development from commencement of construction works to when the development becomes 'operational'.

147. Nonetheless, at paragraph (87) Mr Kessels states in his view that despite this *'uncertainty and subjectiveness' in the determination of the scale of residual effects and the extent of mitigation required to achieve no net loss does not mean the principles of this approach should not be applied at all. Rather, in the case of the Amberfield Development, given the uncertainty surrounding the magnitude of the ecological effects on long-tailed bats, the use of some form of agreed approach is an appropriate response when developing a robust and defensible offset/compensation mitigation package.'*
148. Considering the above, as at the date of this s42A report, it is difficult to determine from a planning perspective, what quantum of compensation/off-set mitigation is appropriate to include in a condition. I note that I am aware that this type of condition will require the agreement of the applicant. Based on the recognition of the residual adverse effect on long-tailed bats in the AEE and subsequent information responses, I have included a proposed condition on the assumption that there is level of agreement from the applicant. If that is not the case and the evidence shows that another approach is more appropriate I would be open to consider that. Accordingly, I reserve my position on the question of the adverse residual effects on long-tailed bats and will provide a definitive position in my proposed update to my s42A report when Council presents its evidence.
149. Mr Kessels assessment of ecological effects on long-tailed bats is 'Very High' using the EIANZ guidelines. The applicant's expert ecologist has assessed the effects as 'moderate' using the same guidelines. However, the applicant's own assessment of the adverse effects in the addendum AEE states that the effects described do not equate to effects being 'no more than minor'. Having considered Mr Kessels assessment I am not satisfied that the 'effects are no more than minor' for the purposes of s104D(1)(a).

## **7.7 Construction Effects**

150. The applicant has sought consent from the regional council for large scale earthworks and has primary responsibility for controlling land use for soil conservation and water quality. The proposed works also require land use consent under the District Plan as the earthworks will exceed the permitted activity standards in Rule 25.2.4.1. The bulk earthworks are anticipated to result in a cut to fill balance across the site (745,000m<sup>3</sup> cut/639,000m<sup>3</sup> fill), with some estimated 106,000m<sup>3</sup> of excess fill to be stockpiled and used for landscaping of reserve areas and as a pre-load of high water table areas. The purpose of the District Plan controls is to maintain natural character and amenity values by retaining existing landforms, natural features and significant vegetation; avoid creating new or exacerbate existing natural hazards; minimise effects on land and water from erosion and sedimentation; ensuring practical building sites and effective stormwater flow paths; and minimise dust and noise.
151. Construction effects in terms of natural character, ecology, natural hazards, and contaminated soils have been discussed in the proceeding sections. It is anticipated that the regional council consents will impose conditions in terms of erosion and sediment control and any consequential discharges, water quality and fresh water ecology effects. Other effects with earthworks can include noise, dust nuisance and the discovery of archaeological sites.

152. The period of the construction works will extend over a number of years as the development progresses in stages across the site. To manage potential nuisance effects such as noise and dust, and silt laden runoff to roads and adjacent properties it is recommended the prior to works commencing that the applicant provide to Council for certification a comprehensive Construction Management Plan addressing the procedures to manage and control these off-site effects as outlined in the Civil Infrastructure Report submitted with the application (Appendix O). This includes a communication strategy with adjacent landowners. It is also appropriate to include a construction noise condition based on the standard (NZS 6803:1999 'Acoustics – Construction Noise') in the District Plan (refer **Attachment 4**).
153. The District Plan contains accidental discovery protocols agreed with local iwi for the discovery of any archaeological feature, artefact or human remains. The protocols are included in the suite of recommended conditions in **Attachment 4**.
154. Subject to appropriate conditions and taking into account the regional council consents (which will also address sediment and erosion control measures as well as freshwater ecology effects), I consider that any adverse effects in relation to the on-site construction activities will be no more than minor and can be appropriately mitigated to an acceptable level. The off-site transportation effects associated with construction activities is discussed in section 7.7 below.

## 7.7 Transportation Effects

### Operational Traffic

155. The development of Amberfield site will create additional traffic movements on the roading network. These effects have been assessed by the applicant with the provision of a Broad Level Integrated Transport Assessment (Appendix I of the AEE) and has been subject to further analysis through the further information traffic response and caucusing of technical experts on behalf of the applicant, NZTA and HCC (as submitters), and Mr Gray.
156. Mr Gray has provided a Statement of Evidence which also responds to submissions related to traffic (Refer **Appendix F**). Appended to his evidence is the signed Joint Witness Statement from the Transportation caucusing. Three issues seem to be the focus of the caucusing. These are:
- The outputs of the various traffic modelling
  - The impacts of traffic at the Bader Street/Normandy Ave/Lorne Street intersections
  - The requirement for monitoring and mitigation of traffic impacts to an acceptable level
157. These matters are addressed in the evidence of Mr Gray. He records that the traffic modelling presented in the application and the concerns raised in submissions for Bader Street suggest wide ranging conditions from good levels of service to very long delays. HCC actively manages the combined intersections to ensure Bader Street is not unduly disadvantaged.
158. In Mr Gray's opinion traffic modelling in a congested urban environment that includes signals is potentially unreliable, since network priorities can be altered by the road controlling authority. He considers that the models used by the technical experts show the range of potential conditions available. For example, performance at Bader Street can be managed to deliver different outcomes such as:

- *Bader Street intersection levels of service, considered alone, would be satisfactory, and could, for example for the morning peak, be made excellent by maximising green time for Bader Street at a cost to others; and,*
- *Bader Street approach performance, if balanced against the higher traffic volume competing demands of Lorne Street and Normandy Avenue, would lead to limited green time and very long queues on Bader Street.*

159. Modelling undertaken by NZTA suggests the Bader Street/Normandy Ave intersection is operating close to capacity, but with some reserve capacity before efficiency effects become unacceptable. Mr Gray agrees based on his own observations and modelling (using SIDRA). Taking into account network changes (refer Fig 4 in **Appendix F**) likely to affect Bader Street and accepting that there will be a gradual increase in peak traffic as the dwellings in Amberfield are occupied (estimate 100-125 dwellings/year starting 2021), in Mr Gray's opinion there is reserve capacity at the intersections compared to minimum desirable levels of service and significant relief will be provided when the new Waikato River Bridge is operational (2023/2024). Mr Gray acknowledges there will be adverse effects on traffic – mainly efficiency on Bader Street. If these become unexpectedly high, HCC signals management can deal with them to some extent by spreading delays on the wider network. There are also other intervention options such as travel demand management and increased bus use that should reduce demand.
160. Mr Gray does not accept that all the Amberfield subdivision traffic which will be generated when the whole development is completed can be accommodated without significant network infrastructure such as the Southern Links arterial link to the bridge over the Waikato River. In this regard, the expert caucusing reached an agreement on a framework of conditions to control and manage traffic for the Bader/Normandy/Lorne intersections before it becomes unacceptable. The conditions recommend no more than 350 lots shall be developed (s224 certificate issued) unless the required monitoring demonstrates that the specified acceptable level of service criteria is not exceeded, or a solution is implemented to address the acceptable level of service criteria that have been exceeded. A cap of no more than 500 lots is recommended prior to a solution being implemented and operational to mitigate the adverse effects of development to the satisfaction of the relevant road controlling authorities on the SH3 Normandy Avenue/Bader Street/Lorne Street intersections (NZTA and HCC as road controlling authorities).
161. The conditions are intended to first establish baseline data for the relevant network, followed by monitoring when the trigger point of 350 lots is reached to determine whether the levels of service are being met (or a solution is implemented to ensure the level of service will be met). If the outcome of the monitoring demonstrates that the level of service can be met, the next "tranche" of lots can be progressed. This monitoring and assessment process will then be repeated annually thereafter for the next proposed trigger point of 500 lots.
162. Key considerations that lead to Mr Gray's position in paragraph (76) are:
- a. *Acceptance that, subject to appropriate temporary traffic management, traffic conditions on the routes affected (with a focus on Bader Street) will remain acceptable. These works*

*are designed and should be complete this year. Other works such as at the Peacocke/Waterford intersection are likely to be next year.*

- b. Construction traffic is most likely to be in the opposite direction to peak demand.*
- c. The Waikato Expressway will provide some improvement in conditions when it is operational (late 2020/early 2021).*
- d. The proposed Waikato River Bridge should be operational in 2023.*
- e. Based on the Weston Lea programme (refer attachment A Gantt chart), and a likely 100-125 dwellings/year, traffic effects from dwellings would commence around mid-2021, so would be around 225 dwellings occupied by 2023 and 350 dwellings by 2024.*
- f. As Figure 4 shows, the traffic generation will increase cumulatively as houses are occupied that provides time for monitoring and intervention, should unexpected effects occur.*

163. He further considers that it is likely that development will remain below the 350 dwellings threshold for monitoring and control before the bridge is operational. The “hard cap” of no more than 500 lots before the bridge is operational provides protection against unexpected conditions or a delay in the bridge resulting in unacceptable effects.

#### Construction Traffic

164. The applicant’s ITA did not consider construction traffic effects or management. The s92 response (Item 50) on this matter does not provide information on construction traffic timing or quantities. It is noted that the proposed earthworks do not have a substantial cut/fill surplus and that surplus fill will be utilized within the site such that heavy truck movements are not anticipated to be unusually high or extend over long periods. The development is also to be developed in stages. The applicant’s s92 response is that construction traffic is not expected to have a major effect during peak periods.
165. Mr Gray accepts that construction traffic is most likely to be in the opposite direction to peak demand and is likely to be dominated by contractor staff trips and bulk earthworks movements should not result in off-site traffic. He has estimated typical construction traffic will be around 100vpd and 30-40vpd in peaks, but mainly in the opposite direction to commuter traffic, and equivalent to less than a 2% change in existing Bader Street daily and peak traffic. Given daily traffic can vary by 10% Mr Gray does not see this change to be a significant issue. Nonetheless, Mr Gray considers it desirable for the Applicant to provide additional information on the nature and level of construction traffic at the hearing to confirm it will remain manageable. I agree that this additional information is necessary to provide better certainty regarding the potential effects of construction traffic.
166. In Mr Gray’s opinion, *‘construction traffic effects will be a sensitive issue for the community. There will be construction traffic for the subdivision as well as for the Peacocke infrastructure programme implementation. Construction traffic management will need to be carefully planned and managed. The S92 response suggests a construction traffic management plan as a condition of consent. I consider that to be appropriate and suggest that it should be consistent with the relevant conditions applicable to the Hamilton Southern Links designation. A construction traffic management plan prepared prior to construction when staging and timing is known can minimise the adverse effects of construction traffic. Including planning for heavy traffic routes and monitoring pavement condition reduces the potential for avoidable noise and vibration. This is reflected in the draft conditions’.*

167. The recommended conditions as agreed at the transport expert caucusing (refer **Attachment 4**) require a Construction Management Plan to be prepared and certified by HCC prior to commencement of earthworks and construction activities. The certified CMP must then be implemented. These are standard conditions for large scale subdivisions and requires traffic related matters to be addressed such as construction traffic management and control of debris on roads as well as communication with adjacent landowners and a complaint handling process. The Construction Traffic Management Plan (CTMP) requirements are consistent with the Hamilton Southern Links designation conditions. The CTMP requires a range of measures to be addressed such as maintaining pedestrian, cycle and vehicle access to roads and property, maintenance of access for emergency vehicles, measures to ensure safe interaction between construction traffic and local road traffic, identifying routes to be used and those to be avoided by Heavy Commercial Vehicles (HCV).
168. A specific condition is also recommended that restricts HCVs entering or leaving the site on Sundays and public holidays, and on the other days HCVs may not enter the site before 7am or leave after 7pm.

#### Internal Road Design

169. Mr Gray comments on the proposed internal road widths and cross sections and the ability of all the road corridors to accommodate their transport corridor functions, including stormwater, utility servicing, waste management and other service vehicles and passenger transport. HCC prefers cross sections consistent with the Waikato Regional Technical Specifications. The proposal contains narrower roads in some locations and provides information such as swept paths and conceptual bus routes to demonstrate adequacy. It is noted the WEL Networks Ltd submission (69) supports the proposed 1.5m minimum berm width for underground utilities but has questions how aboveground infrastructure such as transformers and ring main units will be accommodated.
170. Mr Gray considers there is a higher risk of poor operational performance where minimum standards are applied and a combination of narrow roads, limited space on sites for parking, and multiple demands on the road corridor combine. To reduce the risk of conflict between HCC road controlling authority expectations and the Consent-holder's proposals, he considers it would be desirable for the Applicant to demonstrate at the hearing how the proposed layouts will meet the operational demands on the roads and consider specific features to be incorporated in conditions. This should consider:
- a. Activities such as:
    - i. Coordination of design and construction of driveways, parking bays and landscaping with bus stops, refuge islands, and intersections;
    - ii. Maintenance - channel cleaning, clearing swales, etc.
    - iii. Deliveries and collections by large vehicle (such as house moving and construction deliveries),
    - iv. Refuse collection (noting HCC has committed to wheelie bins using trucks fitted with automatic lifting arms commencing July 2020); and,
  - b. Scenarios where roadside parking, where available, is occupied.

171. The Council's Project Engineer, Mr Brooke for Council as regulatory authority processing the applications has discussed the proposed road cross sections with the Council's City Transportation Unit as the future asset owner and confirms that there is sufficient width for all infrastructure and use required within the road corridor widths (refer Memo in Appendix G(d)). He concurs with Mr Gray that given the space available in the front berms required for parking bays, street landscaping, stormwater management and vehicle crossings a condition is required to address the location of all this infrastructure at the detailed design stage to ensure the efficient and effective use of the front berm and avoidance of conflicts. This is covered in the recommended conditions in **Attachment 4**, including the requirement for passenger transport accessibility for all stages of the development.

172. I have addressed the question of the proposed collector road design and layout in the earlier section on requiring authority approval. For completeness, I note that Mr Gray has addressed this issue in his evidence in paragraphs [40] to [52]. I agree that there needs to be some further consideration of this issue by the applicant. At this stage, should the Commissioners be minded to grant consent, I am not supportive of imposing conditions based on a roading layout that is, effectively, irrelevant.

#### Bader Street Community Impacts

173. I have also considered the potential community impacts for the Bader Street area associated with the increased traffic volumes associated with the Amberfield development. Bader Street is identified in the District Plan road hierarchy as a Collector Road. A 'Collector' is defined as a transport corridor that performs both a movement and property access function. These transport corridors often move goods and people between local destinations or to higher order transport corridors for further travel. Intra-city passenger transport services are likely to use these routes.

174. Mr Gray advises that NZS 4404:2010 Land Development and Subdivision Infrastructure suggests that traffic around 8,000 vehicles/day would be expected for a collector. The current traffic volume on Bader Street is approximately 7,500 vehicles per day (VPD) based on HCC RAMM data. The volume is predicted to increase by some 1000 vpd annually until limited by monitoring and the recommended 500 lot cap resulting in a possible increase of some 3,500 to 5,000 vpd, without the new bridge place. Once the bridge is operational it is expected that there will be some redistribution of traffic using Bader Street and that it will continue to operate in accordance with the expected Collector Road function.

175. I concur with Mr Gray that the greatest impact on the Bader Street community is accessibility across Bader Street for pedestrians (accessing local shops and community facilities). As discussed in Section 3.4 above the road safety improvements for Bader Street programmed to be completed by late 2019 will assist with safe accessibility for pedestrians.

176. Relying on the expert transportation advice from Mr Gray and taking into account the transportation related issues raised in submissions I am satisfied that the potential traffic effects

as discussed above will be appropriately mitigated by the recommended conditions to an acceptable level and will be no more than minor.

## 7.8 Infrastructure, and Servicing Effects

### Stormwater

177. Mr Clarke has undertaken a review and assessment of the stormwater aspects of the proposed development, including the Sub-Catchment Integrated Catchment Management Plan (Sub-ICMP) on behalf of Council. A draft Sub-ICMP was lodged in advance of the applications for resource consent and was subject to several iterations in response to Council's technical review. Mr Clarke notes that this review was assisted by a fresh water ecologist Mr Miller of Tonkin & Taylor Ltd, who is satisfied the stormwater effects on fresh water ecology are adequately addressed. I noted that fresh water ecology effects will be addressed through the regional resource consents which will address the proposed loss of intermittent streams and have not been considered further in this report, despite some submitters raising fresh water ecology concerns. These matters are outside the scope of what HCC can consider as part of the land use and subdivision consent applications.
178. Mr Clarke's statement of evidence is attached as **Appendix G(a)**. This identifies that the applicant's best practical option for stormwater management comprises:
- collection, treatment and disposal at source (on lot soakage)
  - disposal to subsurface soakage system in road reserve
  - an occasional larger system near river terrace where feasible
179. Mr Clarke confirms that this approach meets the ICMP objectives and is in accordance with the hierarchy of stormwater management outlined in the RITS which places priority on the strategy of adopting soakage as the primary treatment and disposal method.
180. Through the Sub-ICMP review process the applicant has now adopted a design capacity of 10 year for private soakage and 2-year for public soakage. Mr Clarke considers this appropriate however specific conditions of consent are required to address performance risks for all public soakage systems in construction and ongoing operation and maintenance. The original proposal also included treatment for the majority of the road reserves in raingardens with soakage beneath. To reduce the asset management and maintenance costs of a large number of distributed devices the applicant has now proposed some six raingarden basins to centralise the public treatment devices and reduce the number of roads with raingardens.
181. While the exact sizing for the required treatment has not been provided Mr Clarke is satisfied that there is sufficient space within the centralised devices and within the road corridor to achieve suitable treatment and soakage, and that the semi distributed system with some road raingardens to augment the centralised devices provides good resilience benefits and somewhat optimised operation and maintenance and is supported. Conditions of consent are recommended to ensure the centralised devices are designed to treat the public road runoff and any run on water from private pervious areas, and to ensure that erosive flows are not generated at the outfalls and in receiving stream environments.



**Wastewater**

182. The applicant's Wastewater Disposal Report submitted with the AEE (Appendix L) considered two options for the disposal of wastewater from the development to the Council's bulk wastewater system, being discharge to the Far Eastern Interceptor at Crosby Road (north-east Hamilton) and to the Western Interceptor (at Lorne Street Pump Station). The option of connecting to the Western Interceptor was assessed as an interim option until the Council had constructed the proposed Transfer Pump Station for the Peacockes Structure Plan area and pumping wastewater across the Waikato River via the new bridge and extending to the Far Eastern Interceptor at Crosby Road.
183. The report acknowledges the Western Interceptor is known to have overflow issues in heavy wet weather, due to excess inflow and infiltration into the system. The premise of the Western Option was that the flow from the Amberfield development would be controlled in a manner that ensured the existing overflow situation was not made worse when the Amberfield development flow was added. The applicant was requested on 30 August 2018 to provide further information to demonstrate how this could be feasibly managed which to date has not been provided.
184. The applicant's assessment of the Eastern Option is that it is both technically and financially feasible. This involves the construction of a pipeline beneath the bed of the river and construction of 6km of pipeline from Cobham Drive to Crosby Road. This stated by the applicant to be the preferred option, however if for some reason, the Eastern Option becomes unavailable, the Western Option could be implemented. Mr Hardy has reviewed the applicant's Wastewater Disposal Report and his assessment in **Appendix G(b)** is the Eastern Option is the best practical option with the lowest impact on the existing wastewater network which is less constrained to the east. The Eastern Option is consistent with the Hamilton City Wastewater Masterplan which sets out the strategic direction for the wastewater network taking into account existing and future requirements. This position is supported by the submission from the Council's Strategic Infrastructure Unit (65).
185. At the request of the applicant in February 2019, the HCC Wastewater Network Hydraulic Model was run based on a proposed discharge to the existing wastewater network at 134 Peacocke Road for up to 200 lots and with an emergency storage volume within the Amberfield site of 330m<sup>3</sup>. This model showed that an interim connection of 200 lots cannot be achieved without an increase in the predicted network overflow volume during wet weather. At the time of writing this report no further modelling options had been assessed.
186. Mr Hardy recommends that should consents be granted that the development proceed based on the eastern discharge solution only. This position is also supported by Ms Collier, HCC Strategic Manager – Infrastructure for Council as regulatory authority processing the applications. Her memo attached as **Appendix G(c)** outlines the known capacity constraints in the western wastewater network and the wastewater master planning and strategic servicing to address the constraints requires the Peacocke development area to discharge to the Far Eastern Interceptor.

187. The alignment of the wastewater trunk rising main for the Eastern Option is shown as part of the applicant's Preliminary Engineering Drawings (Plan 141842-WW500 in Appendix W). The alignment appears to all be within public land and can potentially be constructed without requiring any further consents from Council. This will be determined at the detail design stage once the final alignment is confirmed. Any additional consents required will need to be applied for at that time.
188. Mr Hardy has also reviewed the applicant's internal wastewater network design presented in the Amberfield Civil Infrastructure Report (Appendix O). Four pump stations are proposed with Pump Station 4 the main discharge pump station for the development to the Far Eastern Interceptor and the other three pump stations discharging into Pump Station 4. In Mr Hardy's opinion there may be opportunities for optimisation of the design and recommends the preliminary engineering design is reviewed and optimised as part of the detailed design phase to identify efficiencies that can be made in terms of the number of pump stations and the associate pumping versus gravity regime.

#### **Water Supply**

189. Mr Brooke, HCC Project Engineer has reviewed the applicant's Water Supply Report submitted with the AEE (Appendix M) and concurs with the solution recommended (refer Memo in **Appendix G(d)**). The proposal is to install a 250mm diameter water main and a 150mm diameter water main for resilience purposes, installed from the existing infrastructure (opposite Water Treatment Plant on Peacocke Road) and brought some 2.2km to the site along Peacocke Road. Mr Brooke is satisfied with the applicant's assessment using the HCC water supply model that the above layout will provide the site with a suitable level of service for pressure and adequate fire flow capacity for the development, and will not adversely impact on the level of service on the existing network.

#### **Other Services**

Mr Brooke is satisfied the proposed road cross sections adequately provide for the requirements of utility services and consultation with the relevant providers will be required at the detailed design stage, and requirement for their works clearance certification. This will also apply to the relocation and undergrounding of the WEL Networks 11Kv transmission line and location of the required termination structure.

#### **Summary**

190. Should the Commissioners decide to grant consent, I am satisfied that the infrastructural and servicing matters can be appropriately addressed through conditions of consent and any associated effects will be no more than minor. This is on the basis that wastewater from the development is conveyed to the Council's Far Eastern Interceptor.
191. A detailed suite of infrastructure conditions has been recommended covering these matters (refer **Attachment 4**).

## 7.9 Summary of Potential Environmental Effects

192. I concur with the applicant's AEE conclusion (section 5.15) on potential adverse effects on the environment that, *'with two exceptions, being the more than minor adverse effects on archaeological features (garden soils and borrow pits) and the heritage values that these features embody, and the effects on the Hamilton South long-tailed bat population, it is concluded that the adverse effects of the proposed development are no more than minor'*. I note the applicant's AEE conclusion has not changed in the Addendum AEE dated 21 February 2019 (paragraph 4.3).
193. The proposal will or is likely to have adverse effects on the environment that are more than minor. Accordingly, the proposal will not pass the first test of s104D(1)(a) of the RMA and must pass the second test, being s104D(1)(b) not contrary to the objectives and policies of the District Plan for the Commissioners to have jurisdiction to determine the applications under s104(1) of the RMA. The second test of s104D is considered below.

## 8 DISTRICT PLAN OBJECTIVES AND POLICIES

194. As discussed in Section 3.1 above, the District Plan provisions for Peacocke have been the subject of an extensive public process through the Variation process commenced in 2007 and the District Plan Review process commenced in 2012, which lead to the Peacocke Structure Plan and masterplan mechanism for the development of the area.
195. The relevant objectives and policies providing context and direction for the assessment of the proposal are set out within Chapter 2 – Strategic Framework, Chapter 3 – Structure Plans, Chapter 5 – Special Character Zones, Chapter 15 – Open Space Zones, Chapter 19 – Historic Heritage, Chapter 20 – Natural Environment, Chapter 21 – Waikato River Corridor and Gully Systems, Chapter 22 – Natural Hazards, Chapter 23 - Subdivision and Chapter 25 – City Wide.
196. The applicant's AEE (Appendix A) and s92 response (Appendix H) provides an assessment of the relevant objectives and policies in the above-mentioned chapters of the District Plan, apart from Chapters 2 and 15. I have reviewed the assessment of the objectives and policies in the AEE, and in relation to Chapters 5, 19, 21, 22, 23 and 25 I adopt the applicant's assessment. This reliance is informed by the technical expert assessments that have contributed to this report, including those of Mr Hattingh (Council's Urban Design Planner) as set out in his memo in **Appendix H**. In relation to the other chapters there are policy issues that require further examination, analysis and comment – particularly in relation to outcomes sought for the Peacocke Structure Plan area and the Natural Environment.

### Strategic Framework – Chapter 2

197. The objectives in Chapter 2 provide the overall strategic framework to guide development within the City. Objective 2.2.1 and 2.2.2 seek that Hamilton has an increasingly sustainable urban form and directs that new development should occur in areas that have been identified for that purpose and where they will use land and infrastructure efficiently. To achieve this, Policy 2.2.2b emphasises the need for development within identified growth areas to be in general

accordance with the relevant Structure Plan. Objective 2.2.3 and its supporting policies provide a focus on urban design matters.

198. I consider the proposal gives effect to these strategic objectives by making sustainable and efficient use of land zoned for residential development. The subject land has been determined to be suitable for residential zoning: giving effect to various strategic growth documents for Hamilton and the Waikato. Consideration of Policy 2.2.2b and urban design matters is considered below alongside the Structure Plan objectives and policies.
199. Objective 2.2.6 sets out the minimum dwelling targets for Hamilton City to give effect to the National Policy Statement on Urban Development Capacity. This is discussed further in Section 11 below. In my opinion, the proposed development will assist towards meeting the required minimum dwelling targets.
200. Objective 2.2.8 seeks the restoration, protection and enhancement of the Waikato River and this includes the natural, cultural, heritage and amenity values of the river. I am satisfied that the proposal is consistent with the aim of this objective and the associated policies.
201. Objective 2.2.9 seeks that resource management priorities are developed in partnership with Waikato-Tainui. The applicant advises that the proposal was developed in consultation with Tangata Whenua, including review and feedback through a Cultural Impact Assessment on behalf of the Tangata Whenua Working Group representing mandated representatives from each Waikato-Tainui hapu within the vicinity of the site. It is understood the applicant is continuing to work closely with the group as the development progresses.
202. Objective 2.2.11 seeks to ensure Hamilton's heritage values are reflected in its built environment and appropriately protected. I am satisfied that cultural heritage values associated with the site are reflected and protected principally through the proposed heritage reserve.
203. Objective 2.2.12 seeks to protect and enhance natural features, ecosystems and indigenous biodiversity. The ecological values of the site are limited given the past modification of vegetation that has occurred to enable the agricultural use of the land. No scheduled Significant Natural Areas within the site will be adversely affected, although it is considered by Mr Kessels that the site is a "significant habitat of indigenous fauna" for Long-Tailed bats and the effects on this nationally threatened species from the urbanisation of site needs to be appropriately addressed through consent conditions. The stormwater management techniques proposed are designed to protect water quality and provide improved habitat for aquatic species.
204. Objectives 2.2.13 & 2.2.14 seeks to ensure efficient use and development of natural and physical resources and that land use and development through the master plan development for the site and is integrated with the provision of infrastructure (including transport, Three waters services and open space). The proposal adequately provides for this integration as demonstrated by the master plan and the supporting technical information provided, and will be implemented through the recommended conditions of consent.

**Structure Plans – Chapter 3**

205. The applicant's AEE has provided an assessment against the Structure Plan Objectives and Policies and those specifically for the Peacocke Structure Plan. I generally concur with the applicant's assessment against these objectives and policies. Adherence to these objectives and policies from an urban design perspective is also supported by Mr Hattingh as set out in his memo in **Appendix H**. In his opinion the proposal corresponds closely to the underlying principles for the Peacocke Structure Plan and *'is a suitable response to the existing context (including the topography, natural and heritage features).....The concept also provides for a range of well-connected, functional public open spaces, including access to and along the River edge'*.
206. As stated above, higher order strategic Policy 2.2.2b emphasises the need for development within identified growth areas to be in general accordance with the relevant Structure Plan. This is reflected in the lower order Structure Plan Objective 3.3.1 *'Optimise long term, positive environmental, economic, social and cultural effects of greenfield development'* and supporting Policy 3.3.1a *'Development should be in general accordance with the relevant Structure Plan'*.
207. The applicant's AEE assessment states the proposal is in general accordance and has a high level of consistency with the Structure Plan provisions. I concur on the basis that the 'Active Recreation' component of the Peacocke Structure Plan is provided. The indicative location on the Peacocke Structure Plan Figure 2-1 (refer **Attachment 1**) for this active recreational facility (Sports Park) is within the southern part of the Amberfield site adjacent to Peacocke Road. The indicative location gives effect to the Social Wellbeing objectives and policies (3.4.1.11) of the Peacocke Structure Plan. The applicant's AEE (Appendix A) states these *'have all been achieved with the provision for a sports park on easy sloping to flat land in the southern part of Amberfield on Peacocke Road, to the south of the proposed neighbourhood centre. The park is also linked with other open space and shared paths.'*
208. Through the Council's s92 request I questioned how the consistency with the Structure Plan and associated Social Wellbeing objectives and policies was being achieved when the applicant's subdivision plans show the indicative location for the Sports Park as proposed residential lots. The applicant's AEE response (item 57) is that consistency is based on the assumption that the Sports Park is provided, however the applicant is reluctant to show the Sports Park on the subdivision plans on the basis that there has been no firm commitment from the Council as the future asset owner to purchase and vest the land in Council. The response then appears to require the Council in its RMA decision making role to be satisfied that the taking of the land for Sports Park in the indicative location shown on the Peacocke Structure Plan is the most appropriate use of the land.
209. In my opinion the indicative location for 'Active Recreation' on the Peacocke Structure Plan has already been considered and determined through an extensive public RMA process as outlined in Section 3.1. I do not consider it a matter for re-examination through this resource consent process. Mr Stirling, Open Spaces and Facilities Unit Planner for Council as regulatory authority processing the applications has assessed the Open Space provisions of the proposal against the Peacocke Structure Plan provisions (refer Memo in Appendix I). In his opinion the overall open

space provision proposed by the applicant achieves a high-quality outcome for the future community of the area and is anticipated to deliver on most open space components of the structure plan, except for the sports park provision. Mr Stirling in his memo outlines the work that was undertaken through the Peacocke Variation/Plan Change process to inform the sports park provision in the Peacocke Structure Plan. This resulted in the identification of two indicative locations, one in the northern section nearer to the existing urban suburbs and the other in the south-east section within the Amberfield site.

210. Based on Hamilton's existing level of service Mr Stirling indicates the land requirement for 'active recreation' in Peacocke is approximately 24 hectares. He advises that through pre-lodgement discussions with the applicant, Council staff advised that 'a 7ha sports park would be a suitable provision in the Amberfield development'<sup>3</sup>. This size is reflected in the applicant's urban design report for potential sports fields (Appendix D, Fig 8-2). The Council also has funding allocated for the purchase of land for recreational purposes in Peacocke in its current Long-Term Plan. The Council's Open Spaces and Facilities Unit is currently preparing a Notice of Requirement to designate the land for the northern sports park. Mr Stirling advises that to meet the required level of service for active recreation facilities both land areas for sports parks are required.
211. I concur with Mr Stirling that the applicant's proposed approach to deliver the sports park in the Amberfield development as outlined in section 2.5 of the AEE provides no certainty for the provision and access to active recreation facilities for the future residents of Peacocke and the wider community and is inconsistent with the objectives and policies referred to above. To achieve consistency, it is recommended that the residential lots that are identified as being located on the required Sports Park area (refer plan in Mr Stirling's memo) be shown as a single lot to vest as recreation reserve. To provide greater certainty for the applicant, I consider it appropriate for a specific timeframe to be required of the Council's Open Spaces and Facilities Unit Manager to purchase the land required for the Sports Park or otherwise the applicant can proceed with the development of the land for residential lots. A draft condition to this effect has not been provided at this stage, however, a placeholder for a condition is provided in **Attachment 4**. It is anticipated this matter will be addressed by the applicant and the Council (as submitter) at the hearing.

#### **Natural Open Space Zones – Chapter 15**

212. Although these objectives and policies have not been specifically addressed in the applicant's AEE. For completeness, I do not consider they add any additional considerations that have not been covered through the above assessment. I note they relate only to the area of the site adjacent to the Waikato River margin which is zoned Natural Open Space in the District Plan.

#### **Natural Environments – Chapter 20**

213. The applicant's AEE has provided an assessment in section 7.8.3 in addition to the assessment in Appendix A against the Significant Natural Areas Objective 20.2.1 and supporting policies. Objective 20.2.1 seeks '*Significant Natural Areas are protected, maintained, restored and enhanced.*' The District Plan has identified and listed Significant Natural Areas (SNA), two of

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<sup>3</sup> Confirmed in Open Spaces and Facilities Unit Submission (65)

which are located within the river margin of the Amberfield site (SNA 48 & 54). It is my view that the supporting policies relate to the avoidance of development effects on the identified SNA in the District Plan, further supported by the corresponding rule provisions which only apply to activities within the scheduled SNA in the District Plan.

214. The proposed development avoids the two listed SNA within the Amberfield site. One subsoil drain will extend through SNA 54 with an outflow to the river. The construction effects associated with installing the subsoil drain on the SNA can in my opinion be appropriately managed through consent conditions. The proposed riparian buffer planting will also enhance the two listed SNA.
215. Mr Kessels correctly points out in his statement of evidence (**Appendix E**, paragraph 18) that the scheduled SNA in the District Plan relate to indigenous vegetation values only based on a 2011 report the Centre for Biodiversity and Ecology Research, University of Waikato. Proper and considered protection of indigenous fauna is largely not addressed within the District Plan. Mr Kessels has therefore gone on to assess the applicant's proposal against the WRPS criteria for identifying areas of SNA. In this regard he considers the site is ecologically significant with respect to the WRPS criteria.
216. The existing policy framework for SNAs in Chapter 20 applies within the areas scheduled in the District Plan. I do not consider there to be jurisdiction for the commissioners to treat the provisions as applying beyond the scheduled areas, despite the apparent flaw in the lack of assessment of fauna for the purposes of chapter 20. Nevertheless, I have considered the policies in a general sense in the context of considering fauna (as part of biodiversity matters) outside of the scheduled areas.
217. Relevantly, there are a number of policies which refer to the "avoidance" of adverse effects in relation to SNAs and indigenous ecosystems.<sup>4</sup> While this language is directive and relates to the specific issue of indigenous biodiversity, and noting the lack of assessment of fauna in chapter 20, these policies are "aspirational" and were promulgated prior to the case law in *King Salmon* and *RJ Davidson*. I have therefore not afforded significant weight to these policies in my assessment. I have taken the same approach in the context of the effects on fauna outside the scheduled areas.
218. As part of the Hamilton District Plan appeals settlement process, an agreement between Hamilton City Council and Waikato Regional Council (WRC) was reached to develop a local indigenous biodiversity strategy to identify opportunities to restore and enhance biodiversity in the City. This commitment was recognised by the inclusion of Policy 20.2.1p in the District Plan which reads:  
*'Develop a local indigenous biodiversity strategy to identify opportunities to restore and enhance biodiversity in Hamilton.'*
219. A Pilot Project commenced in November 2016 and was jointly funded by the Waikato Regional Council and Hamilton City. The Local Indigenous Biodiversity pilot is the first part of that

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<sup>4</sup> Policies 20.2.1d) to l) & n)

commitment towards the development of a Local Indigenous Biodiversity Strategy. It provides the most appropriate combination of regulatory and non-regulatory tools to help restore and enhance biodiversity in Hamilton and will inform the development of Councils Biodiversity Strategy anticipated to be adopted later this year. The Pilot project identifies an aligned support structure to support and deliver collective impact for biodiversity, enabling strategic decision-making and investment. This will likely involve a governing body representing all relevant agencies (eg. WRC, DOC, TLAs, Iwi).

#### **Summary**

220. Overall, when considering all the relevant objectives and policies in the District Plan in the round, and given the imposition of appropriate land use and subdivision consent conditions I do not consider the applications to be contrary to its objectives and policies.

### **9 CONCLUSIONS ON S104D OF THE RMA**

221. Based on the assessment of environmental effects set out in Section 7 above, the applications fail the test in section 104D(1)(a) as the adverse effects of the activity on the environment will be more than minor. Accordingly, the applications fail the test in section 104D(1)(a). However, based on the assessment of the relevant objectives and policies set out in Section 8 above, the activity will **not** be contrary to the objectives and policies of the District Plan. Accordingly, the applications pass the test in section 104D(1)(b).

### **10 ASSESSMENT OF EFFECTS ON THE ENVIRONMENT – S104(1)(a) & (ab) RMA**

222. It follows that the applications may proceed to be assessed under section 104 of the RMA. The effects assessment set out in Section 7 above is relied upon for the purposes of the assessment under section 104(1)(a). Subject to the recommended conditions in **Attachment 4** and the recommendation from Mr Kessels that an off-set mitigation and or compensation conditions be included to address the residual adverse effects on the nationally threatened long-tailed bat, I am satisfied the potential adverse effects on the environment will be acceptable.
223. The original AEE recognised that there would be a residual adverse effect on long-tailed bats and the applicant's terrestrial ecology report recommended the establishment of a Trust to administer to hold and administer developer funds to mitigate those effects. A request for greater detail on this was sought through the s92 request, with a response that more detail would be provided prior to finalisation of this report. However, the addendum Ecological Report concludes that while there will be residual effects, it is not necessary to mitigate these effects. Mr Kessels disagrees. Accordingly, I have proposed offset/compensation conditions to address these effects which I acknowledge requires the applicant's agreement. If evidence is presented at the hearing that these conditions are not required I will review my position.
224. An assessment in terms of s104 also requires regard to be had to any positive effects on the environment associated with the proposed development. The applicant's AEE has not identified any specific positive effects. Mr Gray's evidence in Section 9 recognises the locational advantage of the Amberfield site, particularly to the city centre which in his opinion should lead to positive



effects from greater potential for walking and cycling, reduced traffic growth on existing corridors with no relief planned, and consequential safety and amenity benefits for the wider community.

## **11 ASSESSMENT OF RELEVANT PLANNING INSTRUMENTS – S104(1)(b) RMA**

225. Section 7 of the applicant's AEE provides an assessment of the applications against the higher order provisions of the relevant statutory documents, namely:

- National Policy Statements
- National Environmental Standards
- Waikato-Tanui Raupatu Claims (Waikato River) Settlement Act 2010
- Waikato Regional Policy Statement (WRPS)
- Waikato Regional Plan
- Hamilton Operative District Plan

226. This assessment is not repeated here in the s42A report but rather is considered to be reasonable and appropriate for consideration of the applications. Accordingly, these part of the applicant's AEE are adopted by the s42A report author in accordance with s42A (1B)(b) of the RMA, with a commentary below where I consider pertinent.

### **11.1 National Policy Statements and Standards**

227. Those National Policy Statements and Standards considered pertinent to the assessment of the applications are:

#### **National Policy Statement – Urban Development Capacity (NPS-UDC)**

228. The NPS-UDC recognises the need for urban environments to be able to develop and change to meet the needs of people and community's and the future generations in urban environments. The proposal provides for residential development, infrastructure and public spaces that are designed to function as an integrated and cohesive urban development to meet the needs of an expanding city, on land intended and zoned for this purpose. Accordingly, I consider the proposal is aligned with the National Policy Statement.

229. The NPS-UDC placed new requirements on local authorities with a high-growth urban area within their district or region. In the Waikato Region, the NPS-UDC identifies the Future Proof sub-region, comprised of, as a high-growth urban area. The requirements include the need to incorporate minimum targets for sufficient, feasible development capacity for housing in Regional Policy Statements and District Plans by 31 December 2018. The inclusion of such requirements is to be made without using the process in Schedule 1 of the RMA. This is commented on further below.

**National Environmental Standard for Assessing and Managing Contamination in Soil to Protect Human Health (NESCS)**

230. The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ensure that land affected by contaminants in soil is appropriately assessed and made safe for human use.
231. If a proposed activity involves any of the following on land that is or has been used or is more than likely to have been used for a hazardous activity or industrial land use (HAIL) then the NESCS regulations apply:
- removal of fuel storage systems and associated soil,
  - soil sampling,
  - soil disturbance,
  - subdivision of land,
  - a change in land use
232. As a greenfield site that has been used for pastoral farming for many years the land is highly likely to have been subject to a variety of agricultural practices that could have resulted in soil contamination.
233. This assumption was confirmed by information gathered as part of a Preliminary Site Investigation (PSI) done and reported by ENGEO on behalf of the applicant (refer Appendix K of the application documents). The PSI has established based on a variety of historical information and site walkover that multiple HAILs are known or suspected to have been, or currently are, present at the site. As discussed in section 7.5 above, given the identification of these potentially hazardous activities on-site, further detailed investigation is required to determine if the concentration of contamination in the soil exceeds the applicable human health standard.
234. In the absence of a Detailed Site Investigation (DSI) the proposal can proceed as a Discretionary Activity under the NESCS. The Council's Contaminated Land Officer has recommended a suite of conditions to ensure the necessary investigation (DSI) is undertaken prior to any soil disturbance works commencing, and remediation and /or management is undertaken to ensure effects on human health of future site users and the environment is generally unlikely (refer **Attachment 4**).

**11.2 Waikato Regional Policy Statement**

235. The Waikato Regional Policy Statement (WRPS) provides an overview of the resource management issues in the Waikato region and sets the direction and foundation of the regional and district plans which must give effect to the WRPS.
236. The WRPS objectives and policies for the Vision and Strategy for the Waikato River (Section 2), Built Environment (Section 6), Heritage (Section 10) and Biodiversity (Section 11) are in my opinion particularly pertinent. In that regard, I am aware that the District Plan was promulgated to give effects to the WRPS. However, I am also aware that the ecological assessments carried out to inform the preparation of the provisions relating to SNA and

biodiversity focussed primarily on indigenous *flora* and did not undertake a detailed assessment of matters relating to indigenous *fauna*. In that regard, I have concluded that there is a degree of “incompleteness”, regarding the District Plan.

237. Furthermore, as stated above, chapter 20 of the District Plan includes policies which use the term “avoid” in numerous policies. Those policies go further than what the WRPS contemplates. In that sense, the District Plan “gives effect” to the WRPS but also establishes a framework which is much more onerous. While there is nothing which precludes a district plan from including objectives and policies which are more stringent than those in a regional policy statement, it does create an anomaly in the hierarchy of planning documents in the context of these applications which, in turn, is amplified by the uncertainty of the assessment of “fauna” in the context of the District Plan. For these reasons, I am of the view that it is appropriate to have recourse to Part 2 in the overall assessment of the applications. This is addressed later in this report.
238. Against that background, the following section assesses the relevant provisions of the WRPS for the purpose of these applications.
239. The RPS was updated on 19 December 2018 to meet the mandatory requirement of the NPS-UDC to incorporate minimum targets for sufficient, feasible development capacity for housing. Objective 3.27 ‘Minimum housing targets for the Future Proof area’ was inserted.

### **3.27 Minimum housing targets for the Future Proof area**

*The minimum targets for sufficient, feasible development capacity for housing in the Future Proof area are met, in accordance with the requirements of the National Policy Statement on Urban Development Capacity (NPS-UDC) 2016.*

Area	Minimum Targets (number of dwellings)		
	Short to Medium	Long term	Total
	1-10 years	11-30 years	
	(2017-2026)	(2027-2046)	
Hamilton City <sup>5</sup>	13,300	23,600	36,900
Waipa District	5700	8200	13,900
Waikato District	7100	12,300	19,400
Future Proof Sub-Region	26,100	44,100	70,200

240. Policy 6.15 of the RPS also sets density targets for Hamilton City, Waipa and Waikato Districts (informed by the Future Proof Sub-Regional Growth Strategy). This strategy was particularly relevant in justifying the densities provided to achieve compact urban environments that support existing commercial centres, multi-modal transport options, and allow people to live, work and play within their local area. The policy sets a density target for Hamilton Greenfield areas such as the Peacocke Structure Plan area of 16 households per hectare.

<sup>55</sup> These minimum dwelling targets for Hamilton City were inserted in the District Plan on 14 December 2018 (new objective 2.2.6)

241. This has been achieved through infill development and development of Greenfield areas such as the northern parts of Rototuna and Ruakura, and parts of Rotokauri where strategic infrastructure is available. The demand for new housing continues to be high and Council is satisfied that there remains through continued infill development and within the existing Greenfield areas for feasible development capacity to enable the minimum targets in the RPS to be achieved and to give effect to the NPS-UDC.

242. The applicant's AEE (pg 64) has confirmed that the Amberfield development will in the long term (taking into account further re-subdivision of parts of the site) achieve an average density of 18 households per hectare for the developable area of the site.

### **Heritage**

243. The RPS provides the broad regional level policy direction for the protection, maintenance and enhancement of heritage. Objective 3.18 and associated Policy 10.3 state:

#### ***3.18 Historic and cultural heritage***

*Sites, structures, landscapes, areas or places of historic and cultural heritage are protected, maintained or enhanced in order to retain the identity and integrity of the Waikato region's and New Zealand's history and culture.*

#### ***10.3 Effects of development on historic and cultural heritage***

*Manage subdivision, use and development to give recognition to historic and cultural heritage.*

244. Mechanism for achieving this are identified in Policy 10.3.1 and include cultural values assessments and cultural impact assessments, conservation and open space covenants, and accidental discovery protocols. The applicant's archaeological assessment evaluates the heritage qualities of the sites and assesses the effects. The heritage qualities assessment has been based on the WRPS Criteria 10A Table 10-1 Historic and Cultural Heritage Assessment Criteria. As discussed in Section 7.3 above, Ms Simmons considers the assessment provides a thorough and robust review of the heritage values of the site effected by the proposed earthworks, and of the proposed heritage reserve which will provide a representative component of the archaeological landscape across the site.

245. The RPS also refers to a Regional Heritage Inventory however the preparation of this inventory has not commenced at this stage. As such it is the respective district plans and local communities that identify the heritage schedules and rule provisions for protecting and managing the effects of development on heritage within each district.

246. If granted, the proposal will result in the loss of 11 identified archaeological sites. As the WRPS refers to retaining the identify and integrity of history and culture and integrated management of heritage resources, I do not necessarily consider the loss of the archaeological sites as inconsistent with the WRPS. Certainly, the WRPS anticipates that plans and the consenting process will provide for the protection of heritage, but it does not define how this will be achieved.

247. As noted in Section 7.3 above, only one of the eleven identified archaeological sites is scheduled in the District Plan as a Group 2 Archaeological and Culture Site. Group 2 sites are listed for information purposes only. There are no provisions in the District Plan for the protection of these site. Ms Simmons assessment concludes that *'the primary mitigation proposed, systematic archaeological investigation and recording, is an appropriate action to remedy the loss of archaeological information as a result of earthworks'*. Together with the other mitigation measures proposed by the applicant and supported by the applicant's CIA, which includes the setting aside of land as a heritage reserve that will provide a representative component of the archaeological landscape, I concur with Ms Simmons that the heritage management framework of the WRPS will be adhered to for the development of the site.

### **Biodiversity**

248. As discussed in Section 8 above, I have identified that there are a number of policies in Chapter 20 of the District Plan which refer to the "avoidance" of adverse effects in relation to SNAs and indigenous ecosystems. Noting the lack of assessment of fauna in chapter 20, these policies are considered "aspirational" and were promulgated prior to the case law in *King Salmon* and *RJ Davidson*. I did not therefore not afford significant weight to these policies in my assessment of the District Plan objectives and policies.
249. I concur with the applicant's AEE that the predominance of these "avoidance" policies is inconsistent with the WRPS policy approach. That is of working towards achieving no net loss of indigenous biodiversity at a regional scale. Also, the WRPS was finalised after the District Plan.
250. Mr Kessels in his statement of evidence has applied the WRPS criteria for determining ecological significance of the Amberfield site, noting that the Significant Natural Areas identified in the District Plan have not addressed indigenous fauna. He considers the site ecologically significant with respect to the WRPS criteria, including pastureland and treeland habitats, and hence section 6(c) of the RMA.
251. Taking into account the assessment of ecology effects in Section 7.6 above, I consider and subject to the recommended conditions in **Attachment 4** and the recommendation from Mr Kessels that an off-set mitigation and or compensation conditions be included to address the residual adverse effects on the nationally threatened long-tailed bat, I am satisfied that the proposed development will not be inconsistent with the policy approach of the WRPS.

### **11.3 Waikato Regional Plan**

252. The applicant has sought consents from the Waikato Regional council for earthworks, stream works, bridge over southern gully and stormwater discharges (as discussed in Section 4.2 above) in accordance with the provisions of the Waikato Regional Plan. I understand that no further regional consents are required to implement the proposed development. I am therefore satisfied that there are no other matters arising from the regional planning documents that require further assessment or that would have a material effect on the assessment of the applications subject of this report.

#### 11.4 Hamilton City District Plan

253. The District Plan sets out rules and performance standards for a wide range of matters relevant to the land use and subdivision applications. These includes construction, land stability, infrastructure, transportation, subdivision standards and so forth. The proposal is a Non-Complying Activity, therefore an assessment against the relevant standards is appropriate as a guide and for determining appropriate conditions. The applicant's AEE provided a tabulated compliance assessment against the District Plan rules and development standards (Appendix B). I have reviewed this assessment and generally concur with the findings which demonstrates significant compliance with the development standards. I have attached an edited version of the applicant's assessment (refer **Attachment 3**) incorporating in red font amendments provided by the applicant's further information response (dated 17 August 2018), and taking into account subsequent changes to the layout of the development in the north-eastern part of the site following public notification. My assessment includes an additional standard not covered in the applicant's assessment and comments where I consider compliance is required and can be appropriately addressed by consent conditions.
254. Two submitters<sup>6</sup> have raised concerns regarding the applicant's master planning of Neighbourhood 6, in that it does not adequately or comprehensively cover the whole neighbourhood. I have discussed in Section 4.3 above the fact that the land use application has not provided detail of the proposed development of the "whole neighbourhood" in the Master Plan submitted (as required by rule 5.3.3.1c), and the activity status of this non-compliance.
255. The District Plan does not expressly state why a Master Plan must cover the "whole neighbourhood", but I concur with the reasoning expressed in the Applicant's AEE (pg 9) that to achieve an integrated planning approach for the development of Peacocke master planning needs to extend over more than individual parcels of land to provide connectivity and efficient and sustainable supporting infrastructure as envisaged through the Structure Plan objectives and policies. The Amberfield development extends over 105 hectares of land and includes two full neighbourhoods and parts of two others that fall within a natural sub-catchment area. In my opinion the scale of the development area is consistent with achieving an integrated planning approach.
256. Neighbourhood 6 encompasses the identified location of a future suburban centre to serve the Peacocke Structure Plan area and a concept plan is depicted in section 3.4.2 of the District Plan with a description of the envisaged structure plan components for the suburban centre. This includes a mix of commercial, community and residential activities based around attractive and well-functioning open space. The concept plan shows the orientation of retail activities within the Amberfield site and the west side of Peacocke Road within land owned by the Johnson Family Trust.
257. The District Plan states that the City's existing suburban centres vary in size and character between 10,000 and 20,000m<sup>2</sup> gross floor area. The Urban Design Report appended to the

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<sup>6</sup> Johnson Family Trust (45) and Woolworths NZ Ltd (75)

applicant's AEE (Appendix D) explains that the part of the site within Neighbourhood 6 identified for a suburban centre is defined by two "super blocks" and the concept layouts (three provided) are illustrative only. The s92 response confirmed the gross floor area of retail and commercial uses associated with each concept design ranges from some 5000m<sup>2</sup> to 10,000m<sup>2</sup>, together with provision for medium residential development, community facilities, public open space, informal recreation areas and parking areas. The two "super blocks" are shown as two "super lots" on the subdivision plans (lots 864 & 865) and are bisected by the north-south road through the development. No land use consents are sought as part of these applications for the range of activities anticipated within the suburban centre as the market preferences still require refinement.

258. I am satisfied that the size of the "super lots" (approx 6.6ha) can more than adequately accommodate the range of activities anticipated in the suburban centre within the Amberfield site. The development of the lots will require land use consents under the provisions of the District Plan. As part of any application, sufficient design detail and consideration of integration with the area identified in the Peacocke Structure Plan on the western side of Peacocke Road as requested by the submitters would be required. I do not consider the illustrative concepts provided by the applicant for the suburban centre within the Amberfield site which shows an indicative roading layout for the Neighbourhood 6 suburban centre on the west side of Peacocke Road predetermines the outcomes of any future land use consents that will be required for the development of this area.
259. Bearing in mind these factors, I am satisfied that the proposed development will not preclude or otherwise restrict the opportunities for further development within the Peacocke Structure Plan area. Furthermore, the indicative layouts shown for the Neighbourhood 6 suburban centre will not undermine future development of that land as other design options can be developed which will integrate with any existing development.
260. The District Plan includes assessment criteria and a subdivision design guide for the design and layout of development within all zones. It is useful to review these criteria even though they do not impose any limitation or exclusion on what can be assessed as part of the determination of the applications.
261. It is important to consider the context of the District Plan and how the assessment criteria apply to development. The District Plan clearly anticipates new development at Peacocke and seeks to manage the effects of new development to respond and maintain the context and special character of the area.
262. The applicant's AEE provided a tabulated assessment criteria checklist (Appendix C) and details where the relevant criteria have been taken into consideration in the various supporting technical documents. While the matters for Council's discretion are unrestricted I consider the relevant assessment criteria matters have been identified and are reasonably taken into consideration in the applicant's respective technical assessments. I do not consider further assessment is necessary to assist with the positions reached in this report.

263. The Subdivision Design Guide (Section 1.4.1, Vol 2 District Plan) is addressed in the Applicant's Urban Design Report (Appendix D. For completeness the relevant subdivision assessment criteria and Guide have been taken into consideration by Council's Urban Design Planner (refer memo in Appendix H). I have read the Urban Design Report assessment which is supported by Mr Hattingh's assessment. I concur with these assessments. In my opinion the subdivision layout responds positively to the natural and cultural features of the site and adjacent Waikato River. The proposed layout of the subdivision with range of residential lot sizes, block and allotment layout, logical street pattern, good through site linkages for walking and cycling and extensive areas of open space will provide a high quality urban environment. This view is also supported by the Council's Urban Design Panel.
264. The Urban Design Panel is an independent group of industry experts who provide comment on key development proposals before they are submitted for resource consent. The proposal was submitted to the Panel on 14 March 2018, and their report is appended to the applicant's Urban Design Report. The Panel is very supportive of the proposal but have recommended design guidance for the housing typologies and development of the streetscape to achieve consistent residential design quality. The Urban Design Report (Section 5.9 – Residential Design Guidance) identifies instances where more restrictive standards than what is in the District Plan are advised. It is unclear how these more restrictive standards are to be enforced to achieve the outcomes sought, given Council cannot be involved in design standards for individual dwellings beyond those in the District Plan. Mr Hattingh is of the view that the implementation and dependence on the District Plan standards alone will only partly achieve the urban design outcomes sought and he recommends the applicant consider additional design guidance and peer review. The applicant should clarify at the hearing how the more restrictive standards as outlined in the Urban Design Report are intended to be implemented.

## **12 OTHER MATTERS -S104(1)(c)**

### **12.1 Council Strategies and Plans**

265. Council has a wide range of strategies and plans in terms of social and economic growth as well as for the supply of services and provision of infrastructure and are referenced in Section 1.1.2.2 of the District Plan. These strategies and plans help to inform and shape the provisions of the District Plan which provides the direct planning framework and assessment of land use activities.
266. I am satisfied through the technical input from Council staff and other technical experts that the applications do not raise any fundamental issues with Council's strategies and plans that Council has adopted other than potentially the Wastewater Master Plan as discussed in Section 7.8 above. Adherence to recommended conditions requiring wastewater to discharge to the Far Eastern Interceptor will maintain consistency with this Plan.

### **12.2 Waikato-Tainui Environmental Plan**

267. The Waikato-Tainui Environmental Plan includes objectives and policies that aim to ensure that urban development is well planned and the environmental, cultural, spiritual, and social



outcomes are positive. The Plan is designed to enhance Waikato Tainui participation in resource and environmental management and for developers and statutory bodies to gain an understanding as to what the aspirations of Waikato-Tanui as an Iwi Authority are.

268. The Cultural Impact Assessment (CIA) submitted with the applications has considered the proposal against the Waikato-Tainui Environmental Plan and concludes subject to the recommended mitigation measures outlined in the CIA there is alignment with the Plan. As noted in Section 7.3 above, the CIA identifies support for the proposed heritage reserve as a cultural values recognition of the identified archaeological sites, which will provide opportunity for interpretative recognition of the ancestral landscape. This will also be reflected in the applicant's intention to use cultural indigenous place making throughout the development through street naming, use of indigenous plant species, landscape design that reflects cultural perspectives (particularly for the Heritage reserve). The CIA also records the TWWG support the applicant's ecological management plan which includes a range of measures to address effects on indigenous flora and fauna.
269. The recommendations of the CIA have been encapsulated in the recommended suite of conditions in **Attachment 4**, where such recommendations are within the scope of s108, s108AA and s220 of the RMA. Some recommendations relating to on-going involvement of mana whenua and tangata whenua partnership outcomes are considered to be outside the scope of conditions which may be imposed on the resource consents.

### **12.3 Registered Interests on Record of Titles**

270. The Record of Titles for the subject site include several registered instruments. The applicant's S92 response (Appendix F) has confirmed that none impact on the proposed development. A drainage easement is redundant and require resolution under s243(e) of the RMA from HCC for the removal, and the cancellation of a covenant registered under s240 RMA. The covenant holds several of the parcels of land together and prevents them from being dealt with separately from one another. Some of the parcels are also subject to s241 RMA (amalgamation of allotments). Council consent to the cancellation of the covenant and amalgamation of allotments will be required for new titles to issue. Separate resolutions for the surrender of the drainage easement and the cancellation of the covenant are provided in **Attachment 4**, with an advice note that the cancellation shall not be undertaken until time of s223 certification for the first stage of the subdivision.

## **13 SECTION 106 RMA**

271. The provisions of section 106 RMA relate to the powers of a Consent Authority in respect to subdivision of land subject to natural hazard. I have considered the relevant s106(1A) matters (listed in Section 6.1 above) and based on the information provided by the applicant and relying on the technical expert assessment on natural hazard risk discussed in Section 7.4 above, I am satisfied this subdivision proposal does not present a significant risk from a natural hazard nor through the subdivision of land accelerate worsen or result in material damage on other land, structures or the subject site, which cannot be appropriately managed through consent conditions.

272. From the information provided, I am also satisfied that sufficient provision has been made as part of the subdivision for legal and physical access to all allotments where required.
273. On the basis of the above, I do not consider there is any grounds to refuse consent under Section 106 RMA.

## 14 PART 2 OF THE RMA

274. Recent case law has confirmed that it may be appropriate to have recourse to Part 2 in the context of a resource consent application [*RJ Davidson Trust v Marlborough District Council* [2018] NZCA 316]. Whether that is necessary will depend on the nature and context of the statutory documents in question. Given that the District Plan and the WRPS “pre-dated” the decisions in *King Salmon* and the *RJ Davidson* line of authority, and that there is both incompleteness and uncertainty in regard to the biodiversity objectives and policies of the District Plan, I do not consider that these documents can be characterised as being “competently prepared” in the manner described in the CA decision in *RJ Davidson*. Accordingly, I have had recourse to Part 2 for the purposes of assessing the applications.
275. Part 2 consists of Sections 5-8 and establishes the purpose and principles of the Resource Management Act 1991. Section 5 provides the overarching requirements of sustainable management and the relevant matters in s6 and s7 to these applications are outlined in Section 6 above.

### **Section 5 – Purpose**

276. Section 5 defines sustainable management as ‘... means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while - ...’.

### **Section 8 - Treaty of Waitangi**

277. This section requires those involved in the development of natural and physical resources to take into account the principles of the Treaty of Waitangi.
278. While further submissions and evidence of the consultation process may be presented at the hearing, I have no concerns with respect to the applications and how this may be viewed in light of the Treaty.
279. Subject to the further evidence regarding the residual effects on long-tailed bats and agreement on suitable conditions (if any), I am satisfied that the proposal will achieve the purpose of the Act and consents may be granted.

## 15 LAPSE PERIOD OF CONSENTS

280. The applicant has sought an eight-year lapse period for the consents given the extensive nature of the proposed development and that it will be undertaken in stages. S125 of the RMA provides

a default period of five years for the development to be given effect to unless otherwise specified in the consents.

281. In accordance with s125(2) a subdivision consent is given effect to when a survey plan in respect of a subdivision has been submitted to the territorial authority under s223 but shall thereafter lapse if the survey plan is not deposited in accordance with s224. That is, within three years of the territorial authority approving the survey plan under s223.
282. This extension of three years in total over the normal timeframe for seeking s223 survey plan approval for all stages of the subdivision is considered reasonable given the scale of the development and that giving effect to the subdivision will involve monitoring relating to traffic and terrestrial ecology matters and agreements with the Council on matters relating to roading and infrastructure. There is a prospect that these obligations and requirements may take longer than the normal subdivision certification periods. The extension of time above the normal timeframe is not excessive and in the circumstances is considered reasonable.
283. It is unclear if the applicant is also seeking an eight-year lapse period for the land use consent. I do not consider this is required, as the applicant does not need to give complete effect to the consent as has been determined through caselaw. It is anticipated that the land use consents will be commenced and substantially given effect to within the five-year lapse period such that an extended lapse period is not required.

## 16 CONCLUSION AND RECOMMENDATIONS

284. As a Non-Complying Activity, section 104B of the RMA (1991), states that council:
- *may grant or refuse the application; and*
  - *if it grants the application, may impose conditions under section 108.*
285. Furthermore, section 104D of the RMA sets out the 'threshold test' for non-complying activities. Accordingly, a consent authority may only grant consent to a non-complying activity if it is satisfied that the adverse effects on the environment are minor, or the activity will not be contrary to the objectives and policies of the relevant Plan or proposed Plan. If either of these tests are passed then the application is able to be considered for approval subject to consideration under section 104 of the RMA.
286. Based on the findings of this report it is concluded that the adverse effects on the environment would be more than minor, however the proposal will not be contrary to the objectives and policies of the District Plan. The gateway test of s104D is therefore met.
287. In my opinion, subject to further evidence to resolve the question of adverse residual effects on long-tailed bats and the requirement for any compensation/off-set mitigation to address the potential effect, resource consent can be granted to the Weston Lea Ltd land use and subdivision applications subject to appropriate conditions. I have included recommended conditions for consideration as **Attachment 4**.

288. The suite of recommended conditions in **Attachment 4** relate to the subdivision application only. It is anticipated that most of conditions for all stages of the subdivision will also apply to the land use consent application for the range of land use activities requiring consent as detailed in Section 4.3. Given the extensive number of conditions and that there is likely to be further iterations through the hearing process I have not produce the draft land use conditions at this stage. For ease of administration through the s223 & s224 process of the subdivision application I also consider some re-ordering of the conditions is required and propose an updated condition set incorporating any changes proposed through the hearing process, including the recommended land use conditions as part of the update of this report.

Gillian Cockerell  
3 April 2019